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## Municipal Handbook 2005

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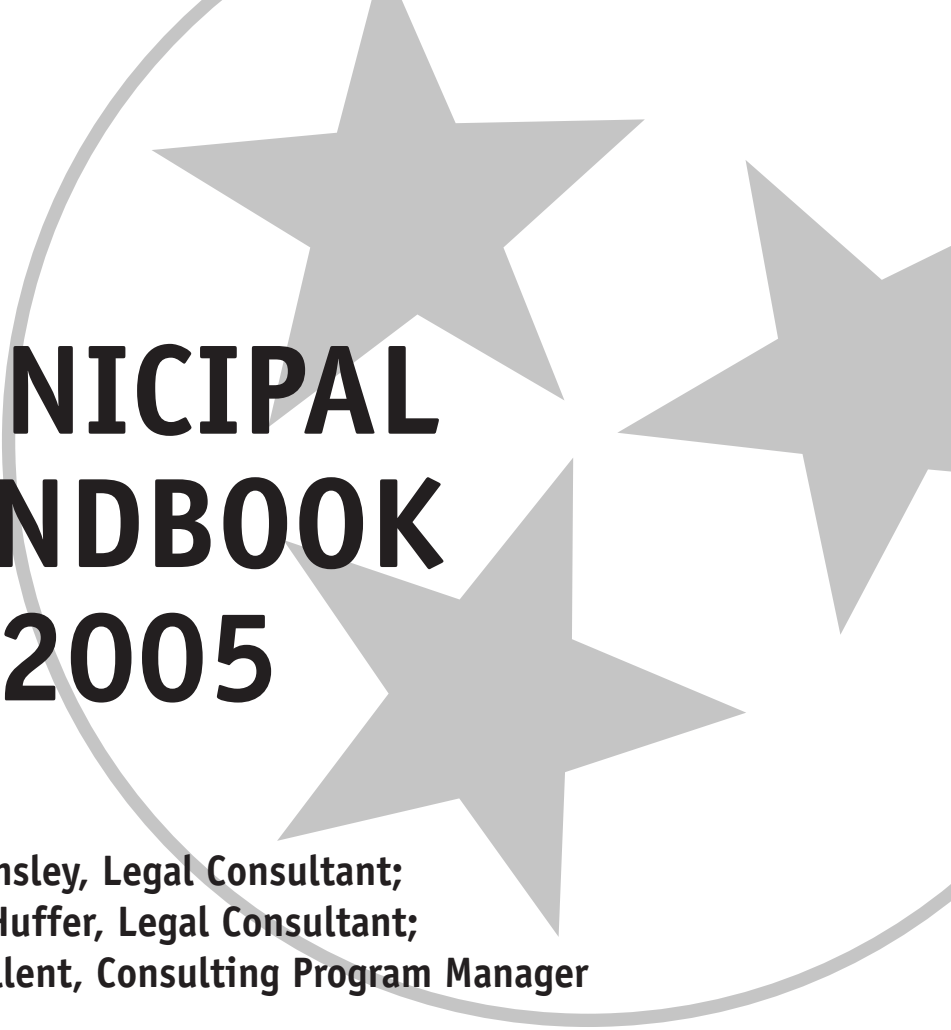
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# **MUNICIPAL HANDBOOK 2005**

**Sid Hemsley, Legal Consultant;  
Dennis Huffer, Legal Consultant;  
and M. Michael Tallent, Consulting Program Manager**



**MTAS**

**Municipal Technical  
Advisory Service**

*In cooperation with the  
Tennessee Municipal League*



# MUNICIPAL HANDBOOK 2005

**Sid Hemsley, Legal Consultant; Dennis Huffer, Legal Consultant;  
and M. Michael Tallent, Consulting Program Manager**

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The Municipal Technical Advisory Service (MTAS) was created in 1949 by the state legislature to enhance the quality of government in Tennessee municipalities. An agency of the University of Tennessee Institute for Public Service, MTAS works in cooperation with the Tennessee Municipal League and affiliated organizations to assist municipal officials.

By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

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# State Constitutional Provisions

Municipalities are created and controlled by the state legislature. Unless there is a constitutional or federal law limitation, the state legislature may do anything it wants to a municipality, including ending its existence. A municipality's only powers are those given by the state legislature and constitution. Before 1953, there were no state constitutional restrictions on the state legislature's authority over municipalities. That year, the Sixth, Seventh, and Eighth Amendments to the Tennessee Constitution were adopted, giving citizens more control over their own cities. (These amendments can be found in Article XI, Section 9 of the state constitution. See Chapter 3, "Forms of Government and Governing Bodies," for a more detailed discussion about private acts, general laws and home rule.)

The Sixth Amendment says that before a private act (legislation applying only to cities named in the act) becomes effective, it must be approved locally by a two-thirds majority of the local legislative body or by referendum. The Sixth Amendment also prohibits the legislature from passing private acts that remove incumbents from any municipal office, shorten their terms, or alter their salaries.

The Seventh Amendment gives municipalities the option of adopting home rule by referendum and prohibits the legislature from passing private acts applying to home rule cities. This amendment also says that all new municipalities shall be incorporated only under general law charters provided in state law.

The Eighth Amendment provides for the consolidation of city and county functions.

## Forms of Government and Governing Bodies

### ***Home Rule***

In Tennessee, home rule means that a city may adopt and change its own charter by local referendum. If a city adopts home rule, the legislature may not pass private acts that apply to that city. General laws that apply to all cities also are applicable to cities with home rule charters.

If a city chooses home rule, it relinquishes the opportunity to have the legislature pass private acts for it. Instead, residents must approve by local referendum any changes to the home rule charter. (See Victor C. Hobday, *An Analysis of the 1953 Tennessee Home Rule Amendments*, Bureau of Public Administration and MTAS, The University of Tennessee, Knoxville; Second Edition, May 1976, pp. 5-9.) In addition, T.C.A. § 6-53-105(c) requires that the municipal chief financial officer estimate the cost and revenue impact of home rule amendments and that such estimates appear on ballots containing amendments to home rule charters.

### ***Consolidation of City and County Functions***

The Eighth Amendment to the Tennessee Constitution deals with consolidating city and county functions (Article XI, Section 9). Under its terms, merging any function, such as schools, or completely consolidating city and county governments, as in Nashville and Davidson County, must be approved in a referendum by a majority of the vote in the city and a majority of the vote in the remainder of the county. Implementing legislation for complete city/county consolidation is found in T.C.A. § 7-1-101–7-3-312. A second consolidation act, the Charter Government Unification Act, applies to counties with a charter form of government (T.C.A. §§ 7-21-101 *et seq.*).

### ***Annexation, Merger, or Creation of Cities***

The Tennessee Constitution states, “The General Assembly shall, by general law, provide the exclusive methods by which municipalities may be created, merged, consolidated, and dissolved and by which municipal boundaries may be altered” (Article XI, Section 9).

The state courts have routinely declared unconstitutional annexation laws that exempt certain counties or that apply only to cities with specified populations. This constitutional provision has also been interpreted as preventing the creation of additional private act chartered municipalities. Thus, any unincorporated area wishing to incorporate must do so under one of several general law charters found in Title 6 of T.C.A. (Volume 2B).

### **Financial Provisions in the Tennessee Constitution**

Municipal revenues and fiscal administration are covered at length in Chapters 7 and 9 of this handbook. Major financial provisions in the state constitution that affect cities are, in summary

- “No public money shall be expended except pursuant to appropriations made by law” (Article II, Section 24). This all-encompassing language means that even the profit from a snack machine in the city hall’s basement must be appropriated by the city council before it can be spent;
- Article II, Section 28, contains provisions for exempting public, religious, charitable, scientific, literary, and educational property from property taxes and establishing assessment ratios for classifications of real property;
- “The credit of no county, city, or town shall be given or loaned ... nor shall any county, city, or town become a stockholder with others in any company, association, or corporation...” unless the arrangement is approved by a three-fourths majority of the vote in a referendum (Article II, Section 29). Because of this restriction, some public/private partnership arrangements that other states are trying would require referendum approval in Tennessee. This provision has been strictly interpreted to prohibit municipalities from waiving property taxes or providing similar economic incentives to attract new industries. However, industrial development corporations formed by municipalities may own buildings and property. As governmental entities, they

are exempted from taxation and may pass this along to the lessees of such properties;

- Article XI, Section 8, prohibits private acts that “... suspend any general law for the benefit of any particular individual ... [or] grant to any individual or individuals rights, privileges, immunities, or exemptions other than such as may be by the same law extended to any member of the community;”
- Local officials are frequently frustrated when the state mandates an action or service for which their municipalities do not have funds. Theoretically, the Tennessee Constitution gives local governments some protection against mandates. It says, “No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost” (Article II, Section 24). It has been held that “The legislature is empowered to elect what the share shall be in the subject expenses” (See *Morie v. Snodgrass*, 886 S.W.2d 761 (Tenn. Ct. App. 1994)).

### Dual Officeholding

The Tennessee Constitution (Article II, Section 26) prohibits “any person in this state” from holding “more than one lucrative office at the same time.” The Tennessee courts have held that this prohibition applies only to holding two *state* offices, not to holding a state office and a local government office or two local government offices (see *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (1931)). For that reason, a municipal officer may serve in the General Assembly or another local government seat unless otherwise prohibited by law. Some municipal charters forbid dual officeholding of various kinds. Such charter provisions have generally been upheld.

## Chapter Two

# Elections

In 1972, the General Assembly enacted a comprehensive law to regulate all elections (T.C.A. § Title 2). Its apparent intent was to override provisions in private act charters and other conflicting general laws relating to the conduct of municipal elections, including certain provisions in T.C.A. § Title 6, Chapter 53, that pertain to municipal elections. Title 6, Chapter 53, has been amended several times since 1972, however, and some of those amendments apply to current municipal elections and appear to be legally sound. For that reason, both T.C.A. § Title 2 and Title 6, Chapter 53, should be consulted and reconciled with respect to questions regarding municipal elections.

The introductory provisions of T.C.A. § Title 2 include the following

- “The purpose of this title is to regulate the conduct of all elections by the people so that ... internal improvement is promoted by providing a comprehensive and uniform procedure for elections ...” (T.C.A. § 2-1-102(3)); and
- “All elections for public office, for candidacy for public office, and on questions submitted to the people shall be conducted under this title” (T.C.A. § 2-1-103).

The statutes outline the procedures and conduct of all city elections, and municipal officials should seek guidance from these laws and from those governing county election commissions.

### Date of Municipal Elections; Changes

In election law, there is no uniform date for municipal elections as there is for county elections. Private act charters prescribe election dates, and a private act municipality may change its election date by changing its charter. The general law mayor-aldermanic charter provides that the first election after the incorporation of the municipality shall be held not later than 62 days following the incorporation election, and it authorizes the board of mayor and aldermen to change its election date by ordinance (T.C.A. § 6-1-207, T.C.A. § 6-3-104).

The general law city manager-commission charter provides that the first election of commissioners shall be the fourth Tuesday following the incorporation election, and it authorizes the board of commissioners to change the election date by ordinance, including changing to the date of the general state election, within certain limitations outlined in the charter (T.C.A. § 6-20-102).

The general law modified city manager-council charter provides that the first election of council members after the incorporation of the municipality shall be the fourth Tuesday following the incorporation election, and it authorizes the city council to change the



election date by ordinance (T.C.A. § 6-31-102).

### ***Qualifying Deadline for Municipal Election***

T.C.A. § 2-5-101(a)(3) requires candidates in municipal elections held with the August general election to file their nominating petitions by noon on the first Thursday in April and candidates in other municipal elections to file their nominating petitions no later than noon on the third Thursday in the third calendar month before the election.

T.C.A. § 6-53-101 states, “The county election commission of each county shall hold, upon no less than one hundred twenty (120) days’ notice, an election for mayor ... and other officers....” T.C.A. § 6-53-101(a)(2) requires municipalities that have changed the term of office of an elected official to file a certified copy of the ordinance changing the term with the county election commission at least seven days before the deadline for filing the notice of election under T.C.A. § 2-12-111.

### ***Early Voting***

“Early voting” applies to all elections, including municipal elections (T.C.A. §§ 2-6-101 *et seq.*). The time and the place for early voting is not more than 20 days nor less than five days before the date of the election, at the office of the county election commission. However, in the case of a municipal election in which there is no opposition for any of the offices involved, the period is not more than 10 or less than five days before the election.

The time during which the county election commission offices shall be open for early voting is set in T.C.A. § 2-6-103 and includes certain Saturdays. However, municipalities of less than 5,000 population may set the Saturday schedule. Certain rules govern the hours that election commission offices are open for early voting in municipal elections in the principal city in counties with a population of more than 150,000.

T.C.A. § 2-6-112 also provides that, at the request of the municipality, the county election commission must establish a satellite voting location for municipal elections, where the election is held at times other than the regular state general elections in August and November. The municipality is responsible for the cost of the satellite location.

### ***Determination of Residence for Voter Registration Purposes***

Any United States citizen who is or will be 18 years old before the next election date and is a Tennessee resident may register to vote unless he or she has been legally disqualified (T.C.A. § 2-2-102, T.C.A. § 2-2-104, T.C.A. § 2-22-122). The registrar follows T.C.A. § 2-2-122 to determine if a person is a Tennessee resident.

### ***Residency Requirements Applicable to Persons Living in a Newly Annexed Area***

People living in newly annexed territory have the same rights as any other people living

in the city, as if the annexed area “had always been part of the annexing municipality” (T.C.A. § 6-51-108(a)). Therefore, any residency period in the annexed area would apply toward residency requirements for voting and running for municipal office. Municipalities should consider election deadline dates when they annex territory. Municipalities that annex territory must provide the appropriate county election commission with

- Maps depicting the area;
- A copy of the annexation ordinance denoting wards or districts, if applicable; and
- A copy of the census taken for the annexation, if available (T.C.A. § 2-2-107(c)).

### ***Notice to County Election Commission of Certain Changes***

The legislative body of each municipality must provide the county election commission an updated list of any changes to house, road, or street names and numbers every six months (T.C.A. § 7-86-127).

### ***Breaking Tie Votes in Municipal Elections***

The municipality’s governing body may either break a tie or call for a runoff election (T.C.A. § 2-8-111(2)).

### ***Recall Elections***

Recall elections are available only for removing municipal officeholders in cities with private act or home rule charters that authorize recall elections. Procedures for recall elections are found in T.C.A. § 2-5-151, but these provisions do not apply in Nashville-Davidson County. Recall petitions must contain one or more specific grounds for removal (T.C.A. § 6-53-108).

### ***Petitions for Recall, Referendum, or Initiative***

T.C.A. § 2-5-151 outlines procedures for cities having charter provisions for recall, referendum, or initiative. The statute contains extensive rules, including

- A registered voter must submit the prepared petition and question to the county election commission, which must certify within 30 days whether it is proper;
- The individual who files has 15 days to fix any problems;
- The petition must include the question, the printed name of each signer, the date of the signature, and *the signatures of at least 15 percent of the city’s registered voters*;
- The completed petition must be filed within 75 days after certification by the election commission and at least 60 days before the election; and
- Individuals have eight days after filing to remove their names from the petition.

Since July 1, 1997, a municipality has been allowed to enact or re-enact controlling

charter requirements relative to the number of signatures required and the 75-day deadline after election commission certification of the petition (T.C.A. § 2-5-151).

## **Primaries**

A municipal election is nonpartisan unless a partisan election is provided for by municipal charter (T.C.A. § 2-13-208).

### ***Nonresident Property Owners' Voting Rights***

Tennessee statutes recognize nonresident property owners' voting rights in municipal elections if such rights are provided by municipal charter or general law. Separate voter registration for nonresident property owners is required. Therefore, nonresident property owners who also are registered to vote anywhere in Tennessee must register as property rights voters before registration closes for an upcoming municipal election, just as other voters must register (T.C.A. § 2-2-107, T.C.A. § 6-53-102).

Presumably, only those people whose names appear on deeds or tax rolls would be eligible to register as nonresident property owners. T.C.A. § 2-2-107(a)(3) provides that no more than two persons are entitled to vote based upon ownership of an individual tract regardless of the number of property owners. If a partnership owns property, only partners named on the deed have nonresident voting rights. Corporate owners have no vote because the Tennessee Constitution and election laws authorize voter registration of only natural people (Article IV, Section 1, and T.C.A. § 2-2-102).

The general law city manager-commission charter provides that a person eligible to vote in municipal elections solely because of nonresident ownership of real property is not eligible for election as a commissioner (T.C.A. § 6-20-103).

### ***Nominating Petitions***

Nominating petitions must be signed by the candidate and 25 or more registered voters eligible to vote for the office the candidate is seeking (T.C.A. § 2-5-101(b)(1)). Such petitions may not be issued more than 90 days before the qualifying deadline (T.C.A. § 2-5-102 (b)(5)).

The county election commission office is required to furnish nominating petition forms for municipal elections (T.C.A. § 2-5-102(b)(1)). Candidates in a city that lies in two or more counties must file their original nominating petitions with the chairperson or administrator of elections in the county where the city hall is located. They also must file certified duplicates of the petition with the commissions of all the counties in which the city lies (T.C.A. § 2-5-104).

If candidates miss a filing deadline or if their petitions do not contain the signatures and home addresses of at least 25 registered voters eligible to vote for the offices the candidates are seeking, their names may not be printed on the ballot (T.C.A. § 2-5-

101(c)).

T.C.A. § 2-5-101 and T.C.A. § 2-2-204 provide procedures for the qualification of additional candidates if a candidate is nominated but dies or withdraws before the election.

### **Candidate Qualifications**

Tennessee's "Little Hatch Act" limits the political activity of certain government employees but does not apply to municipal employees (T.C.A. §§ 2-19-201 *et seq.*). Some municipal charters and ordinances contain restrictions on the political activities of municipal employees; however, they have been superseded by T.C.A. § 7-51-1501. That statute expressly gives local government employees the same rights as other Tennessee citizens to engage in political activities and to run for state and most local government offices. The law contains one significant exception: Local government employees may not run for the local governing body unless authorized by law or local ordinance.

Only the names of "qualified" candidates may be on the ballot (T.C.A. § 2-5-204(a)). In general, charter provisions requiring up to one year of residency in the city to qualify for office are valid. A person may not use a business or commercial address as a residence for purposes of the election code unless the person provides evidence of the residential use of the property (T.C.A. § 2-2-122).

No minimum age qualification for membership on the municipal governing body may be greater than 21 years at the time the member takes office. A minimum age of 18 is fixed to be a candidate for such an office. However, a minimum age between 18 and 21 for assuming office may be fixed by private act, charter provision, or ordinance, if authorized by charter. This law does not apply in a county with a metropolitan form of government (T.C.A. § 6-53-109).

### **Referenda Elections**

The Tennessee Supreme Court has held that "the right to hold an election does not exist absent an express grant of power by the legislature." (See *Brewer v. Davis*, 28 Tenn. 208 (1848); *McPherson v. Everett*, 594 S.W.2d 677, 680 (Tenn. 1980).) The Tennessee Attorney General's office has consistently concluded under those cases that referenda are elections for which there must be statutory authorization (Op. Tenn. Atty. Gen. No. 86-146; 95-013).

### **Local Referenda Permitted**

The following referenda are authorized under Tennessee law

- General obligation bonds (T.C.A. §§ 9-21-201 *et seq.*);
- Liquor retail sales (package stores) or selling alcoholic beverages for

authorized for late filings. Penalties up to the greater of \$10,000 or 15 percent of the amount in controversy may be levied for filings more than 35 days late. It is a Class E felony for a multi-candidate political campaign committee with a prior assessment record to intentionally fail to file a required campaign financial report. Further, the treasurer of such a committee may be personally liable for any penalty levied by the Registry of Election Finance (T.C.A. § 2-10-101–118).

Contributions to political campaigns for municipal candidates are limited to

- \$1,000 from any person (including corporations and other organizations);
- \$5,000 from a multi-candidate political campaign committee;
- \$20,000 from the candidate;
- \$20,000 from a political party; and
- \$75,000 from multi-candidate political campaign committees.

The Registry of Election Finance may impose a maximum penalty of \$10,000 or 115 percent of the amount of all contributions made or accepted in excess of these limits, whichever is greater (T.C.A. § 2-10-301–310).

Each candidate for local public office must prepare a report of contributions that includes the receipt date of each contribution and a political campaign committee's statement indicating the date of each expenditure (T.C.A. § 2-10-105, 107).

Candidates are prohibited from converting leftover campaign funds to personal use. The funds must be returned to contributors, put in the volunteer public education trust fund, or transferred to another political campaign fund, a political party, or an organization described in 26 U.S.C. 1709(c) (T.C.A. § 2-10-115).

Conflict of interest disclosure reports by any candidate or appointee to a local public office are required under T.C.A. §§ 8-50-501 *et seq.* Detailed financial information is required, including the names of corporations or organizations in which the official or one immediate family member has an investment of over \$10,000 or 5 percent of the total capital. This must be filed no later than 30 days after the last day legally allowed for qualifying as a candidate. As long as an elected official holds office, he or she must file an amended statement with the Registry of Election Finance or inform that office in writing that an amended statement is not necessary because nothing has changed. The amended statement must be filed no later than January 31 of each year (T.C.A. § 8-50-504).

## Political Ads

A political advertisement must state the name of the person or group funding it and whether the candidate authorized the ad (T.C.A. § 2-19-120).

Within certain counties, it is illegal for anyone to attach posters, show cards,

consumption on the premises (T.C.A. §§ 57-3-101 *et seq.*, T.C.A. §§ 57-4-101 *et seq.*);

- Annexation (T.C.A. §§ 6-51-104 *et seq.*);
- Local sales tax (T.C.A. §§ 67-6-701 *et seq.*);
- Adopting or surrendering the general law mayor-aldermanic charter (T.C.A. § 6-1-201), the city manager-commission charter (T.C.A. § 6-18-104), and the modified city manager-council charter (T.C.A. § 6-30-106);
- A private act passed by the General Assembly (Article XI, Section 9, of the Tennessee Constitution);
- Creating an emergency communications (911) district (T.C.A. §§ 7-86-101 *et seq.*);
- Recalling a city official if the charter permits (T.C.A. § 2-5-151);
- Adoption or amendment of home rule charters (Article XI, Section 9, of the Tennessee Constitution);
- Popular election of the mayor in cities incorporated under the uniform city manager-commission charter (T.C.A. § 6-20-201(b)); and
- Consolidation of city and county government (T.C.A. §§ 7-1-101, 7-3-312, and 7-21-101 *et seq.*).

### ***Referendum Election Procedures***

The procedures for holding any type of referendum election generally are in the law that authorizes the election. If the legislation does not address a particular type of referendum, the provisions of the Election Code apply. Additionally, T.C.A. § 2-3-204 frequently applies, and T.C.A. §§ 2-12-111 and T.C.A. § 2-6-101 *et seq.* always apply. Elections regarding local option sales tax pursuant to T.C.A. § 67-7-706(a) shall be conducted according to T.C.A. § 2-3-204.

Resolutions, ordinances, or petitions requiring elections on questions to be held during the general election or the presidential primary must be filed with the county election commission at least 60 days before the election (T.C.A. § 2-3-204(b)).

The city attorney is required to summarize in 200 or fewer words any question exceeding 300 words that is to be submitted to the voters (T.C.A. § 2-5-208(f)).

T.C.A. § 2-5-208 requires any question submitted to the people in a local referendum to be followed by the words “yes” and “no” so the voter can mark an X opposite the proper word. Any question must be worded so that “yes” indicates support for and “no” indicates opposition to the measure.

### **Financial Disclosure/Conflict of Interest Disclosure**

All candidates for the chief administrative office (mayor), any candidates who spend more than \$500, and candidates for other offices that pay at least \$100 a month are required to file campaign financial disclosure reports. Civil penalties of \$25 per day are

advertisements, or devices (including election campaign literature) on poles, towers, or public utility company fixtures — whether publicly or privately owned — unless legally authorized (T.C.A. § 2-19-144). Candidates are required to remove all election signs on highway rights of way and on other publicly owned property within three weeks after an election, but there is no penalty for failing to do so (T.C.A. § 2-1-116). In addition to these provisions, many cities have local ordinances regulating posters, advertisements, and devices on public property.

# Forms of Government and Governing Bodies

This chapter deals with provisions not covered elsewhere that are of general application to municipal governments, governing bodies, and their members.

## Types of Municipal Charters

Tennessee has three categories of municipal charter

- **Private act charter.** All cities with a private act charter were incorporated before 1953 when the constitution was amended to prohibit incorporating cities by special act. If a private act city wants to amend its charter, the city's legislative delegation introduces the amendment in the General Assembly, and the city must ratify the new private act;
- **Home rule charter.** A city wanting home rule government writes its own charter and adopts it in a referendum. A home rule city seeking to amend its charter must submit the amendment to a referendum. There are 13 home rule municipalities in Tennessee; and
- **General law charter.** A city may adopt one of the "form charters" that are written into the state code.

(For a complete discussion of the adoption and amendment of the various types of charters, see *Getting to Know and Maybe Love Your Municipal Charter* by Sidney D. Hemsley, The University of Tennessee Municipal Technical Advisory Service, Knoxville, December 1992.)

The governing body of a private act city can play a major role in determining the municipal government's form and structure. Its members can influence the legislature to make private act amendments, which may then be approved by a two-thirds vote of the governing body or by referendum. In a home rule city, charter amendments may be initiated by the governing body passing an ordinance, which is then submitted for referendum approval.

To amend a charter in a general law city, there must be general agreement (or at least no major disagreements) among most of the cities operating under that charter. If there is not agreement, the legislature is not likely to pass a general law amendment.

### **General Law Charters**

The Tennessee code provides four general law charters

- Mayor-aldermanic charter (T.C.A. §§ 6-1-101 *et seq.*);
- City manager-commission charter (T.C.A. §§ 6-18-101 *et seq.*);



- Modified city manager-council charter (T.C.A. §§ 6-30-101 *et seq.*); and
- Metropolitan government charters (T.C.A. §§ 7-1-101 *et seq.*, T.C.A. §§ 7-21-101 *et seq.*).

The following section summarizes the features of the first three general law charters. The two metropolitan government charters are consolidated city/county government charters.

### ***General Law Mayor-Aldermanic Charter***

The mayor-aldermanic general law charter provides for a board of mayor and aldermen consisting of the mayor and two to eight aldermen. Newly incorporated cities must have at least one ward, and two aldermen must be elected from that ward. Newly incorporated cities with more than 5,000 people must have at least two wards, and two aldermen must be elected from each ward.

Any existing city may also adopt the mayor-aldermanic charter. The board appoints the recorder, the treasurer, the city judge (if he or she is not exercising concurrent jurisdiction with General Sessions Court; see Chapter 6, “City Courts”), and other department heads. The mayor prepares the budget, hires and fires employees, and sees that all city laws and ordinances are enforced. However, the board may designate itself or someone else to perform any or all of these mayoral functions. The board may appoint a city administrator by ordinance.

Municipalities that were incorporated under the mayor-aldermanic charter before June 30, 1991, may establish wards, increase or decrease the number of aldermen, and switch to staggered terms in accordance with T.C.A. § 6-3-101–102.

T.C.A. § 6-3-101(a) allows municipalities that incorporated under the mayor-aldermanic charter after June 30, 1991, to modify the number of aldermen and/or wards by ordinance. The ordinance must provide for staggered four-year terms but may provide for transitional terms of fewer than four years.

T.C.A. § 6-3-101(b) and 102(a) allow municipalities incorporated under this charter that have only one ward to provide by ordinance for election of aldermen by numerical position. A person seeking office as an alderman may qualify for only one position.

### ***General Law City Manager-Commission Charter***

The city manager-commission charter provides for a council-manager government similar to the model city government charter recommended by the National Civic League.

A city operating under this charter has a number of options when structuring its governing body. Small cities may have three or five commissioners. Cities with more than 5,000 residents elect five commissioners for staggered four-year terms. Elections may be at-large or from single-member districts. The commissioners may appoint one of

their members as mayor, or the citizenry may elect the mayor to a four-year term.

The charter may be adopted by any newly incorporating or existing city.

The commission appoints a city judge if the judge is not exercising concurrent jurisdiction with General Sessions Court. (See Chapter 6, "City Courts.") The commissioners appoint a city manager who serves at their pleasure, and he or she may be removed only for cause during the first year of employment. The manager is responsible for purchasing, financial affairs, administration, presenting a proposed budget to the commission, selecting and appointing all department heads other than the city judge, and seeing that all city laws and ordinances are enforced (T.C.A. §§ 6-18-101 *et seq.*).

### ***Modified City Manager-Council Charter***

The city manager-council charter leaves fewer options in structuring local government than the other two forms.

Seven or more councilmembers are elected from single-member voting precincts for four-year terms. If a city has fewer than seven precincts, the remaining councilmembers are elected at-large. The mayor is elected to a two-year term by his or her fellow councilmembers. The city may ask its legislative delegation to pass a private act allowing all councilmembers to run at-large. For a new city to incorporate under the city manager-council charter, the community must have at least 5,000 residents. There is no explicit provision for existing cities to adopt this form.

The council appoints the city attorney and a city manager. The city judge is elected to a four-year term or an eight-year term if exercising concurrent jurisdiction with General Sessions Court. (See Chapter 6, "City Courts.") All other department heads are appointed by the city manager. The manager serves at the pleasure of the city council. He or she is responsible for purchasing, financial affairs, administration, presenting a proposed budget to the council, and seeing that all city laws and ordinances are enforced. Councilmembers are prohibited from giving orders to the manager's subordinates. Except for inquiries, they are to deal with administrative officers and city employees solely through the manager.

Unlike the two other statutory charters, the modified city manager-council charter includes a recall provision (T.C.A. § 6-31-301, also see T.C.A. § 2-5-151).

### **Restriction on Incorporating New Cities**

Communities incorporating under mayor-aldermanic or city manager-commission charters must have at least 1,500 residents.

No territory shall be incorporated within five miles of an existing city of 100,000 or more

residents or within three miles of a city of fewer than 100,000 residents (T.C.A. § 6-1-205, T.C.A. § 6-18-103).

T.C.A. § 6-58-101 provides that no new municipality may be incorporated unless it is within a planned growth area. (See Chapter 23, “Countywide Growth Plan, Annexation and Boundary Adjustments, and Dissolution”.) The county legislative body must approve the incorporation prior to the incorporation election. The new municipality must levy a property tax at least equal to its portion of state-shared revenue. For 15 years following its incorporation, the newly incorporated city must give the county the same amount of local option sales tax and wholesale beer tax the county was collecting on the date of incorporation (T.C.A. § 57-6-103, T.C.A. § 67-6-712).

T.C.A. § 9-4-5306 and T.C.A. § 67-5-104 establish the following rules for municipalities that have attempted to incorporate under laws subsequently declared unconstitutional (the Tiny Towns Law) and that have received grants or state-shared revenues or collected property taxes

- Those municipalities are not required to repay state grants, state-shared taxes, or expended property tax revenues;
- Unobligated grants or state-shared revenues belong to the county;
- Unobligated property tax revenues are returned to taxpayers *pro rata*; and
- If grants, state-shared revenues, and property taxes were commingled, there is a presumption that the municipality expended grant and state-shared revenues before property tax revenues.

### ***Newly Incorporated City Taking Over Services***

If a county government is delivering urban services in an area that becomes part of a city by annexation or incorporation, the city has priority in providing public services. The governing body must declare its desire to take over existing services. Arbitration, subject to court review, is ordered if the parties cannot agree (T.C.A. § 5-16-110). Municipalities may also have a prior right to take over a utility district’s service territory in newly annexed areas of the municipality (T.C.A. § 6-51-111). That right may be restricted by federal law where the utility district has issued certain bonds (7 U.S.C. 1926(b)). (See Chapter 23, “Countywide Growth Plan, Annexation and Boundary Adjustments, and Dissolution.”)

### ***Designee on Other Boards and Commissions***

A mayor or full-time commissioner who serves on a municipal, county, or regional board, commission, authority, or development district in an appointed, elected, or *ex officio* capacity may name a qualified person as his or her designee. The designee will have the same powers as the official. This includes the power to vote except at any meeting the official attends. This law does not apply if there is a provision for such a substitution in a charter, private act, ordinance, or general law. It also does not apply to governor-appointed members of boards, commissions, or authorities (T.C.A. § 6-54-112).

## Other General Laws

Several other chapters of T.C.A. § Titles 6 and 7 generally are applicable or available to all cities. Many are summarized in this handbook.

# Ordinances and Codes

“Ordinances” are the legislative enactments of municipal governing bodies. “Codes” are comprehensive ordinances, such as building, plumbing, and electrical regulations. A “code of ordinances” is a compilation (codification) of all city ordinances.

## Procedures for Adopting Ordinances

Charters usually spell out the procedures for adopting ordinances, including the number of “readings” required. If the charter is silent, ordinances need be “read” only once. The general law mayor-aldermanic charter requires two considerations of an ordinance (T.C.A. § 6-2-102). The general law city manager-commission charter calls for two readings, and a city by ordinance may establish a procedure to read only the caption instead of the entire ordinance (T.C.A. § 6-20-215). The modified city manager-council charter requires two readings (T.C.A. § 6-32-202).

### ***Publication of Ordinances***

Generally, ordinances do not need to be published unless the charter or a specific general law requires otherwise. General law mayor-aldermanic cities have the option of publishing each ordinance or only the caption (T.C.A. § 6-2-101).

General law city manager-commission cities must publish each penal ordinance or the caption (T.C.A. § 6-20-218). Publication must be in a city’s general circulation newspaper and is necessary for an ordinance to become effective.

Under the general law modified city manager-council charter, at least an abstract of the essential provisions of each ordinance should be published within 10 days after its adoption (T.C.A. § 6-32-204).

Notwithstanding charter provisions to the contrary, the city needs to publish only the caption and a summary of a comprehensive zoning ordinance (T.C.A. § 13-7-203).

### ***Adoption of Model Codes***

Professional organizations have prepared a number of model codes, such as those for building, plumbing, and electrical, that can be adopted by municipal governing bodies. Such a code may be identified in an ordinance adopting it by reference, which avoids publication. A copy of any code adopted by reference must be filed with the city clerk and be made available for public inspection at least 15 days before the adopting ordinance passes. However, any penalty provisions must be in the adopting ordinance, which must be published in the manner prescribed for ordinances.

If a model code has been adopted, any subsequent amendment must be adopted

unless the governing body, by a vote of at least two-thirds of its total membership, elects not to incorporate the amendment (T.C.A. §§ 6-54-501–505, 507). T.C.A. § 6-54-502 (c) contains provisions for administratively adopting amendments to model codes.

Code enforcement is fully discussed in Chapters 17 and 21.

### ***Adoption of Code of Ordinances***

Cities adopt ordinances one at a time. Eventually, this collection of ordinances becomes unwieldy unless it is organized under common categories and indexed. Organizing individual laws into a coherent book of laws is called “codification.”

The procedure for making an effective codification is spelled out in T.C.A. § 6-54-508–509. It includes publishing notice of and holding a public hearing on the proposed code; adopting the new code by ordinance in accordance with charter requirements; publishing notice of adoption of the code; and placing a copy of the code in the city clerk’s office for public inspection. Newspaper publication of the code is specifically not required. However, if the codification contains any new penal provisions, they must be explicitly stated in the published notice for the public hearing.

T.C.A. § 6-54-510 provides that errors in the original ordinances are cured if corrected in the codification and the new code is adopted by the city council.

# Sunshine Law and Public Documents

## Open Meetings

The Sunshine Law establishes "... that the formation of public policy and decisions is public business and shall not be conducted in secret" (T.C.A. § 8-44-101).

The law applies to formal meetings that require a quorum and to informal meetings of two or more public-body members if they have the authority to make decisions for or recommendations to a public body. If the participants in the meeting "deliberate toward a decision," then the meeting should be open to the public. Public-body members may not use telephones or other electronic communications to evade Sunshine Law requirements (T.C.A. § 8-44-102).

At meetings, all votes must be public. Secret ballots are not allowed (T.C.A. § 8-44-104).

The Sunshine Law requires "adequate public notice" for both regular and special meetings (T.C.A. § 8-44-103). There is no specific statutory definition of "adequate," but the courts seem to have adopted a "totality of circumstances" test to help determine whether a notice is adequate under a particular set of facts. Retreats are covered under the act and may call for extended public notice (See *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. App. 1990).)

An open meeting is not required for

- On-site inspections of projects or programs (T.C.A. § 8-44-102(c));
- Chance meetings of two or more public-body members if they do not deliberate toward a decision (T.C.A. § 8-44-102(d)); and
- Strategy sessions of a governing body in labor negotiations, although actual labor negotiations must be conducted in public (T.C.A. § 8-44-201).

The courts also have created narrow limitations with respect to communication between the city attorney and the governing body when

- The discussion concerns a pending lawsuit;
- The governing body is a named party; and
- The discussion is informational only. (See *Smith County Education Association v. Anderson*, 676 S.W. 2d 328 (Tenn. 1984); *Van Hooser v. Warren County Board of Education*, 807 S.W.2d 230 (Tenn. 991).)

A statute allows certain state bodies to meet using electronic means. This statute is generally not inapplicable to municipal governing bodies, but it does apply to the governing bodies of municipalities incorporated under the general law city manager-commission charter with a commission of three members and a population of more than

2,500 (T.C.A. § 8-44-108).

Actions found to violate the Sunshine Law are void. If a citizen successfully sues a city for a Sunshine Law infraction, the Circuit Court may issue an injunction and impose penalties. The court retains jurisdiction over the city for a year, and the city must submit semiannual compliance reports (T.C.A. § 8-44-105–106).

## Open Records

Almost any document of a city official is subject to the state Open Records Law. A person denied access may petition a Chancery Court to allow inspection. The burden of proof is on the official, who must justify denying access by a preponderance of evidence. State law instructs the court to construe the Open Records Law broadly to give "... the fullest possible public access to public records" (T.C.A. § 10-7-505 (d)).

Records involving an employment search for any chief administrative officer of any public entity in the possession of any person, including associations and private firms, are open for public inspection (T.C.A. § 10-7-503).

Costs, including reasonable attorneys' fees, may be assessed against a city or its agent for willfully refusing to disclose a public record (T.C.A. § 10-7-505). An official required by a court to allow access will not be civilly or criminally liable (T.C.A. § 10-7-505(f)).

## Confidential Records

In general, city employees' personnel records and all other city documents are subject to public inspection under the state's Open Records Law. Some exceptions that affect local government are

- Employee Assistance Program records that apply to counseling or referrals for mental health, marriage, alcoholism, and similar personal problems may remain confidential if they are maintained separately from personnel records (T.C.A. § 10-7-504(d)).
- Unpublished phone numbers, bank account information, Social Security numbers, and driver's license information (except when driving is part of or incidental to the employee's job) of employees are confidential; the same information for the employees' families and household members is confidential (T.C.A. § 10-7-504 (f)(1)).
- Public school student names and identification (Social Security) numbers are confidential (T.C.A. § 49-6-5105).
- City hospital medical records and records of patients receiving medical treatment paid for by a municipality are confidential (T.C.A. § 10-7-504(a)(1)). (The Americans with Disabilities Act requires that all employee medical records must be confidential and kept in a separate file.)
- Library records identifying a person who requested or obtained specific



- materials are not open to the public (T.C.A. § 10-8-101, T.C.A. § 10-8-103).
- Financial statements filed by cities as evidence of their ability to pay workers' compensation claims are confidential (T.C.A. § 50-6-405(b)(2)).
  - Certain "books, records, and other materials in the possession of the Office of the Attorney General and Reporter which relate to any pending or contemplated legal or administrative proceeding in which the Office of the Attorney General and Reporter may be involved" are not open to public inspection (T.C.A. § 10-7-504(a)(5)).
  - All files, reports, records, and papers relative to child abuse investigations are confidential (T.C.A. § 37-1-612).
  - The *Tennessee Rules of Criminal Procedure* contains a section that "does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with the investigation or prosecution of the case or of statements made by state witnesses or prospective state witnesses" (Tenn. R. Crim. P. 16(2)). This rule is an exception to the rule of discovery, which requires the state to allow a "defendant to inspect and copy or photograph any relevant written or recorded" statements, records, objects, etc., that are material to the defense's preparation (Tenn. R. Crim. P. 16(a)(1)).
  - *Arnold v. City of Chattanooga*, 19 S.W.3d 779 (Tenn. Ct. App. 2000), (permission to appeal denied June 19, 2000) holds that a city attorney's work product prepared in anticipation of litigation or in preparation for trial is confidential and is not subject to disclosure under the Public Records Act.
  - Unpublished phone numbers possessed by emergency communications districts are confidential until there is a contract to the contrary between the telephone customer and the service provider (T.C.A. § 10-7-504(e)).
  - Information about law enforcement officers, firefighters, emergency medical technicians, and paramedics who seek help for job-related critical incidents through group counseling sessions led by mental health professionals is privileged and is not subject to disclosure unless the privilege is waived. This includes all memoranda, work notes, work products, case files, and related communication (T.C.A. § 10-7-504(a)(13)(A)).
  - Certain taxpayer information, returns, reports, and audits are confidential (T.C.A. § 67-2-108, T.C.A. § 67-4-722, T.C.A. § 67-5-402).
  - The identity of an informant who provides information resulting in an eviction for violation of drug laws or for prostitution is confidential (T.C.A. § 66-7-107).
  - Home and work telephone numbers, addresses, Social Security numbers, or any other information that could be used to locate an individual who has a protection or restraining order are not open to the public. Such an individual may request this protection and present a copy of the order to the record keeper of the municipality and/or utility (T.C.A. § 10-7-504(a)(15)).
  - Any information pertaining to the location of a domestic violence center or rape crisis center is confidential when the director requests such in writing (T.C.A. § 10-7-504(a)(17)).

- Motor vehicle accident reports retained by law enforcement agencies are subject to public inspection, except for information pertaining to automobile liability insurance contained in such reports (T.C.A. § 55-10-108 (f)).
- Security codes, plans, passwords, combinations, or computer programs used to protect electronic information and government property are confidential (T.C.A. § 10-7-504).
- Filing documents required in order of protection cases, except forms required by the courts, are confidential but may be transmitted to the TBI, emergency response agency, or law enforcement agency (T.C.A. § 10-7-504).
- Records that would allow a person to identify areas of vulnerability of a utility service provider or that would permit unlawful disruption of utility service are confidential. Documents relative to costs of utility property or its protection are not confidential, but confidential information must be redacted when the record is made public. This provision does not limit access to these records by other government agencies performing official functions nor does it preclude any governmental agency from allowing public access to these records in performing official functions (T.C.A. § 10-7-504).
- Contingency plans for responding to terrorist acts are confidential (T.C.A. § 10-7-504).
- Credit card numbers, Social Security numbers, tax identification numbers, financial institution account numbers, burglar alarm codes, security codes, and access codes of utilities are confidential. This information must be redacted when possible when the rest of the record is made public. The requester must pay the costs of redaction (T.C.A. § 10-7-504).

### Law Enforcement Officers' Records

Like all public employees' records, law enforcement officers' personnel files are generally open to inspection subject to the limitations mentioned in the previous section. However, the custodian of the records must record all inspections and notify the officer within three days. The notice must contain the fact that an inspection took place; the name, address, and telephone number of the person making the inspection; for whom the inspection was made; and the date of the inspection (T.C.A. § 10-7-503).

T.C.A. § 10-7-504(g)(1) allows the chief to "segregate" personal information about any undercover police officer or member of his or her immediate family. The chief may refuse to release such information if he or she believes it may endanger the officer or the officer's family.

### Records Preservation and Destruction

Municipal public records are governed by T.C.A. § 10-7-701 and 702. They are defined as "all documents, papers, records, books of account, and minutes of the governing body of any municipal corporation within said county or of any office or department of

such municipal corporation within the definition of ‘permanent records,’ ‘essential records,’ and/or ‘records of archival value’ ” (T.C.A. § 10-7-301). T.C.A. § 10-7-702 authorizes the Municipal Technical Advisory Service (MTAS) to publish retention schedules of records for municipal officials. (Contact the MTAS library or Web site for the most recent publication on this topic.)

### ***Electronic Records***

T.C.A. §§ 47-10-101 *et seq.* allow cities to conduct business by electronic means and to determine the extent to which they will send, accept, and rely on electronic records and electronic signatures. T.C.A. § 47-10-112 provides that electronic records may be retained and have the same status as original records. Electronic records are subject to open records and retention requirements just like other records.

### ***Electronic Mail***

A municipality with electronic mail must adopt a written policy addressing any monitoring of e-mail. The policy must include a statement that any form of e-mail may be a public record open to inspection (T.C.A. § 10-7-512).

### ***Disposal of Records***

T.C.A. § 10-7-702 allows any municipal governing body by resolution to authorize the disposal, including destruction, of permanent paper records that have been copied to another medium, such as microfilm or CD-ROM, in accordance with T.C.A. § 10-7-121. Other records may be destroyed when the retention period prescribed by the retention schedule used by the municipality has expired.

### **Charges for Geographic Information System Data**

Cities may recover as fees for use of geographic information system (GIS) data 10 percent of the total development costs of the system. An additional 10 percent may be recovered if approved by the governing body and by the state Information Systems Council. After this amount is recovered, fees must be reduced to recover only maintenance costs of the system.

Charges for development costs of GIS data may not be made for nonbusiness use by an individual nor for news gathering by news media. For these uses, only charges for the cost of reproduction may be made (T.C.A. § 10-7-506).

### **Notice of Breach of Computer Security System**

Municipalities that hold personal information in a computer system that is not lawfully available to the public must give notice of any breach of the system that would disclose the personal information to any unauthorized person. The disclosure must be made to the person or persons whose information might have been obtained. The law outlines the circumstances under which the notice must be made and the methods for giving the

notice (T.C.A. § 47-18-2107).

## Chapter Six

# CITY COURTS<sup>1</sup>

The Tennessee Constitution empowers the state legislature to define the authority of municipal courts. The constitutional language states that the legislature may “vest such jurisdiction in corporation courts as may be deemed necessary” (Article VI, Section 1).

Any city may establish a municipal court, but Tennessee does not have a uniform system for creating municipal courts. Each private act and statutory charter has its own procedures for appointing a city judge and creating a city court. Under the general law charters and provisions dealing with home rule cities

- The mayor-aldermanic charter provides for the board to elect or appoint a city judge (T.C.A. § 6-4-301);
- The city manager-commission charter provides for the commission to appoint a city judge. Cities meeting population requirements may elect a judge. (T.C.A. § 6-21-501);
- The modified city manager-council charter provides for an elected city judge (T.C.A. § 6-33-102).
- City judges in home rule municipalities are “... appointed on nomination of the mayor or chief executive officer, concurred by the city council.” After judges are appointed, they must run in the next general election. The governing bodies of home rule municipalities are empowered to create additional divisions of a city court (T.C.A. § 16-17-101–105).

### Powers of Municipal Courts

In addition to their authority to hear municipal ordinance violation cases, a number of private act charters, the general law charters, and the statutes governing home rule municipal courts give city courts the same jurisdiction as sessions courts. T.C.A. § 16-18-311, however, limits the exercise of general sessions jurisdiction if the court did not exercise that jurisdiction on May 12, 2003. This section establishes a complex procedure for granting the authority to exercise this jurisdiction.

In *Town of South Carthage v. Barrett*, 840 S.W.2d 895 (Tenn. 1992), the Tennessee Supreme Court held that municipal court judges exercising concurrent jurisdiction with a state general sessions court must meet all of the qualifications of Article VI, Section 4, of the Tennessee Constitution. Judges must be

- Elected for an eight-year term;
- Thirty years old;
- A resident of the state for five years; and

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<sup>1</sup>Chapter No. 914, Public Acts of 2004, designated the Municipal Court Reform Act of 2004, made extensive revisions to city court authority. It is codified at T.C.A. §§ 16-18-301, *et seq.* Its major provisions are summarized in this chapter.

- A resident of the district or circuit one year before the election.

The Supreme Court relied on the principle of the separation of judicial and legislative powers, reasoning that “judges charged with interpreting the criminal laws of this state should be elected ... to assure an independent judiciary free of the political caprice and whims of other government branches.” Subject to the push and pull of a city council, an unelected municipal court judge exercising criminal jurisdiction did not meet the court’s standard for independence.

The following points illustrate Tennessee’s municipal courts’ stand regarding concurrent jurisdiction

- There is an option for an appointed or elected judge under the general law mayor-aldermanic charter (T.C.A. § 6-4-302);
- Two-thirds of Tennessee’s cities are chartered under private acts, and a large percentage of those charters grant the municipal court concurrent jurisdiction with general sessions courts and provide for an appointed judge;
- Several municipal courts in general law city manager-commission charter cities have been granted concurrent jurisdiction with general sessions courts (T.C.A. § 6-21-501);
- Tennessee has several home rule municipalities. T.C.A. § 16-17-102 provides that judges in home rule municipalities shall be “appointed on the nomination of the mayor or chief executive officer, concurred on by the city council or other legislative body, but said judges so appointed shall run for election in the next general election.” Grants of concurrent jurisdiction also are found in many home rule charters themselves. Some home rule charters also provide for appointing the municipal judge. In addition, T.C.A. § 16-17-102 does not specifically provide for a judicial term of eight years or require that the municipal judge meet the other constitutional qualifications of Article VI, Section 4;
- T.C.A. §§ 16-18-201 *et seq.* authorize municipalities to provide, by ordinance, for the election of municipal court judges; however, they do not grant municipal court judges concurrent jurisdiction with general sessions courts; and
- T.C.A. § 16-18-311 makes it extremely difficult to be granted the authority to exercise general sessions jurisdiction after May 12, 2003.

In *City of White House v. Whitley*, 979 S.W.2d 262, (Tenn. 1998) the Supreme Court was asked whether Article I, Section 8, of the Tennessee Constitution prevents non-attorney judges from presiding over trials of criminal offenses punishable by incarceration. The court held that individuals facing such charges are constitutionally entitled to an attorney judge. Therefore, non-attorney judges who exercise concurrent general sessions court jurisdiction may not preside over criminal cases if the punishment includes jail.

It seems fairly clear that a municipal court judge exercising concurrent jurisdiction must

be a resident of the city in which he or she presides over court.

In courts where cases of state law violations may be prosecuted, the district attorney general acts as prosecutor (T.C.A. § 8-7-103).

### Penalties for Violations of Municipal Ordinance

A fine for a municipal ordinance violation may not exceed \$50 unless the fine is “remedial.” *City of Chattanooga v. Davis and Barrett v. Metropolitan Government of Nashville and Davidson County*, 54 S.W. 3rd. 248 (Tenn. 2001). Examples of fines that are remedial include those that recover administrative expenses, disgorge ill-gotten gains, provide restitution, or are prospectively coercive. Home rule municipalities may recover actual administrative expenses incurred to enforce ordinances that prohibit false threats or hoaxes involving biological weapons, destructive devices, or weapons of mass destruction (T.C.A. § 6-54-306).

It is questionable whether any municipal court in Tennessee may impose jail sentences for municipal ordinance violations. The only exception may be the willful nonpayment of a fine for an ordinance violation. An indigent person may not be jailed for nonpayment of penalties (T.C.A. § 40-24-104, *Tate v. Short*, 41 U.S. 395, 28 L.Ed. 2d 130 (1971)). T.C.A. § 29-9-108 makes failure to appear without just cause a contempt of court offense punishable by a \$10 fine and up to five days imprisonment. However, this statute applies only to municipal courts in metropolitan counties, courts that hear violations of municipal ordinance cases, and city courts that exercise jurisdiction over certain environmental cases in cities in Shelby County. In the latter instance, the defendant may also be punished for contempt of court for failure to correct a violation of the municipal code relating to health, housing, fire, and building and zoning codes.

### Court Costs

Court costs must be prescribed by charter or ordinance. \$1 of this amount must be forwarded by the clerk to the state treasurer to pay for training for city judges and city court clerks (T.C.A. § 16-18-304).

### Audits

The accounts and records of the municipal court must be audited annually (T.C.A. § 6-56-105(a)).

### Reports to Administrative Office of the Courts by Municipal Courts with General Sessions Jurisdiction

T.C.A. § 16-1-117(a)(3) and (4) require municipal courts with general sessions jurisdiction to report data to the administrative office of the courts on all criminal and civil

cases. Caseload data must be reported once a month and must show all cases filed and disposed of in a month by the 15th of the following month.

### Training of City Judges and Court Clerks

City judges and city court clerks must receive three hours of training each year provided through the administrative office of the courts. Failure of the judge to receive the training after a six month grace period renders his/her judgments null and void. Both judges and clerks must be compensated and reimbursed for the training in accordance with the municipality's travel policy (T.C.A. § 16-18-309). The administrative office of the courts and the department of safety must also provide annual training to court clerks on the necessity and importance of preparing and forwarding to the department of safety the abstract forms for conviction of traffic violations (T.C.A. § 55-10-306).

### Concurrent Holding of Other Offices by Judge

The municipal judge may not hold any other office, such as city recorder or mayor, with the municipality. Judges holding other offices on March 1, 2005, who are recorders or mayors or another city official, are grandfathered (T.C.A. § 16-18-308).

### Appeals

Any person dissatisfied with a municipal court judgment must appeal within 10 days, Sundays exclusive, to the circuit court and give a \$250 appeal bond (T.C.A. § 16-18-307).

### Tennessee Municipal Judges Conference

Each municipal judge is a member of the Tennessee Municipal Judges Conference and must attend its annual meeting unless physically incapable. The municipality must pay the costs of attendance (T.C.A. § 17-3-301).

### Other Provisions

T.C.A. § 16-1-102 gives "every court ... power to punish for contempt." The Tennessee Supreme Court held that a city court may exercise such power (*May v. Krichbaum*, 152 Tenn. 416, 278 S.W. 54 (1925)). Contempt of a municipal court is punishable by a maximum fine of \$50 (T.C.A. § 16-18-306).

City judges in cities with a population of more than 160,000 must be lawyers authorized to practice law in Tennessee courts (T.C.A. § 17-1-106(d)). City judges in general law modified city manager-council cities also are required to be licensed attorneys (T.C.A. § 6-33-102). All municipal judges are under the jurisdiction of the Court of the Judiciary (T.C.A. § 17-5-102). T.C.A. § 16-18-301 empowers municipal court judges to administer



oaths.

The judge is required “to keep or cause to be kept” records on traffic charges that reflect “every official action by the court or the Traffic Violations Bureau ... including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, and the amount of fine or forfeiture resulting from every traffic complaint, warrant, or citation ...” (T.C.A. § 55-10-306).

Municipal clerks may accept fines, court costs and other fees by credit card and collect a processing payment not exceeding five percent of the fine, court cost or other fee (T.C.A. § 8-21-107). Fines also may be paid by check or money order (T.C.A. § 9-1-108). If a check or money order for fines, court costs, or other fees is returned unpaid, T.C.A. § 9-1-109 authorizes a penalty of one percent of the check or money order. If the check or money order is less than \$2,000, the penalty is \$20 or the same amount as the check or money order, whichever is less.

Fines and costs imposed by a municipal court judge that are not paid after 30 days may be collected by execution issued by the municipal court clerk using the procedure prescribed for general sessions courts in T.C.A. § Title 26, Chapters 1, 2, 3, and 4. A police officer is authorized to serve the necessary papers anywhere in the county (T.C.A. § 6-54-303). The local governing body may authorize a collection agency to collect fines and costs that are more than 60 days overdue. The contract with the collection agency must be in writing, and the agency’s fee may not exceed 40 percent of the sums collected (T.C.A. § 40-24-105).

Collected fines and costs resulting from a municipal court exercising concurrent jurisdiction with general sessions courts must be shared with the state and county except in Madison and Gibson counties (by population classification), where they are to be remitted to the respective municipality (T.C.A. § 6-54-304(2)).

T.C.A. § 39-16-609 makes failure to appear as directed by a summons or citation a misdemeanor or felony, depending on the crime charged.

# Municipal Revenues

A primary responsibility of a city's governing body is to determine the city government's functions and activities and how they will be financed. Since cities are required to operate with balanced budgets, they continually face the problem of raising revenues to match rising expenditures. Following is a general treatment of the major revenue sources available to Tennessee cities.

## Property tax

### **Levy**

Article II, Sections 28 and 29, of the Tennessee Constitution and T.C.A. § 67-5-101 give cities the authority to tax all real and personal property unless state law provides an exemption. Property tax is the mainstay of municipal revenue for nearly all Tennessee cities. (Some small cities make no levy.) Many cities derive substantial revenues from other sources. But even in those cities, property tax is the primary "budget balancer" because the tax rate and imposition of the tax are subject to the discretion of the governing body. T.C.A. § 67-5-103 wiped out all existing maximum tax rate limitations, whether imposed by home rule, general, or private charters; however, it is not clear if reimposing such a limitation by a subsequent charter provision is allowed (T.C.A. § 67-5-103).

### **Assessment**

Local assessments generally are made by county assessors. The act that consolidated city assessment offices with county assessors directs that a property assessment roll be furnished to each city at the cost of reproduction (T.C.A. § 67-1-513). The assessor also is required to certify to the mayor by the first Monday of every November a copy of the assessor's annual aggregate statement showing the total assessed value of the property in each city, civil district, and ward (T.C.A. § 67-5-807).

The county board of equalization is the only body in each county to hear assessment appeals. However, a city located in two or more counties is authorized to make its own assessments and have a board of equalization. It may contract with the state board of equalization for assessment services. T.C.A. § 67-1-513 provides for cities to appoint some members to county boards of equalization. The number of appointees depends on the size of the city. For example, in counties having one or more cities with between 10,000 and 60,000 residents, each of the two largest cities with populations exceeding 10,000 appoints one member to the board (T.C.A. § 67-1-401(a)(3)). Supervision and technical assistance for the counties' assessment functions are provided by the state Board of Equalization (T.C.A. § 4-3-5103, 5105; T.C.A. § 67-1-307).

The property of privately owned public utilities (railroads, bus lines, gas companies, etc.)

is assessed by the Tennessee Comptroller of the Treasury, and the assessments are subject to review and revision by the state board of equalization. The comptroller certifies to each city recorder or other tax-collecting official the assessed valuations subject to local taxation (T.C.A. § 67-5-1301–1331).

### ***Periodic Reappraisal***

Every four or six years, as determined by the assessor with the county governing body's approval, reappraisal of all real property and equalization of assessments are required in every Tennessee county unless the state board of equalization determines that reappraisal is unnecessary for a particular county. With the board's approval, the program may be undertaken by the county property assessor and staff, the Tennessee Division of Property Assessments, or a professional firm employed for this purpose. Program costs are prorated among the state, counties and cities (T.C.A. § 67-5-1601).

All property (real, personal, operating, and nonoperating) of private utilities is reappraised by the comptroller of the treasury each year (T.C.A. § 67-5-1301–1302). As a result, in inflationary times the share of a jurisdiction's taxes paid by utilities could grow for six years until the local reappraisal shifts a fair share of the burden back to homeowners and other locally appraised property owners. To prevent such tax shifting, the state board of equalization conducts sales ratio studies every two years to measure how up to date a county's assessments are. The analysis takes a sample of properties that have recently been sold and compares actual sale prices to values on the county assessor's books. The comptroller of the treasury uses the resulting sales ratios to adjust the taxable assessed value of the utility property it appraises (T.C.A. § 67-5-1605–1606). A similar process is prescribed for the state board of equalization to equalize the personal property assessment used by businesses and manufacturers (T.C.A. § 67-5-1509).

Any city lying in more than one county will be reappraised under a separate plan of reappraisal on a cycle determined by the board of equalization. The reappraisal will be done under contract with the state unless the city has a separate assessment office (T.C.A. § 67-5-1601(b)).

### ***Reappraisal Cycles***

T.C.A. § 67-5-1601 requires six-year reappraisal cycles. However, the state board of equalization may approve four-year cycles, and the assessor and county legislative body may allow five-year cycles. The board of equalization may extend the reappraisal cycle of a county beyond the six years to synchronize with a contiguous county's cycle when a city lies partly in each county and contains property of the federal government for which in lieu of tax payments are being made. The statute also changes state funding of reappraisals to a per parcel grant. State grants to four- and five-year programs are limited to the amount required by a six-year program. The board of equalization will determine the initial schedule of review and revaluation.

### ***Certified Tax Rate***

After completing a general property reassessment, a city must determine the tax rate on the new total assessment that would produce no more than the amount of property tax revenue generated the preceding year. This rate is called the certified tax rate.

To reflect extraordinary assessment changes, the municipality's governing body may adjust the calculated certified tax rate according to a method approved by the state board of equalization. The city must submit for review a new, tentative tax rate and supporting calculations to the executive secretary of the state board of equalization. The municipality must then consider the board official's report before fixing a certified tax rate. When there is an excessive adjustment, the board shall order recapture in the following year if the certified tax rate has been overstated because the appeals adjustment was overestimated. A public hearing is necessary if the city exceeds the recapture rate.

A city may not take an automatic windfall of increased revenue from a reappraisal. However, if a city wants to increase its revenue after a reappraisal, it has to formally advertise its intention before the council votes to adopt a tax rate that is higher than the certified tax rate (T.C.A. § 67-5-1701–1703).

### ***Assessment Ratios***

Article II, Section 28, of the Tennessee Constitution provides for using the following percentages of full value to determine assessments

- Public utility real and tangible personal property—55 percent;
- Industrial and commercial real property—40 percent;
- Industrial and commercial tangible personal property—30 percent;
- Residential and farm real property—25 percent; and
- Other tangible personal property—5 percent (T.C.A. § 67-5-801, 901).

### ***Property Tax on Personal Property***

Tangible personal property is subject to the property tax, but the state constitution provides an exemption for personal clothing, household goods, and furnishings (Article II, Section 28).

The system for reporting personal property relies largely on the initiative of the individual taxpayer. Consequently, in the past there have been significant differences in the extent of reporting and payment of personal property taxes in different counties across the state. Legislative enactments over the past several years have made the system more uniform. For example, T.C.A. § 67-5-215(b) was repealed in 1984. It authorized county governing bodies to place a zero value on tangible personal property owned by businesses subject to the Business Tax Law. The legislature also closed a loophole that allowed leased personal property to escape taxation (T.C.A. § 67-4-702(a)(7), T.C.A. § 67-5-502, 901). The same act established statewide depreciation schedules for valuing industrial personal property (T.C.A. § 67-5-903). The act also requires the state board of equalization to direct that commercial and industrial tangible personal property

assessments are equalized with real property in each county by applying the county's real property appraisal ratio to the depreciated value of the taxpayer's personal property (T.C.A. § 67-5-1509).

### **Greenbelt Law**

Lower assessments are provided to encourage open-space land in urban areas. Owners may petition the county assessor to classify land as agricultural (minimum tract size 15 acres), forest (minimum tract size 15 acres), or open space (minimum tract size three acres). If so classified by the assessor, the land is assessed and taxed at its use value. Normally, land is appraised at the value an arms-length purchaser would pay. Use value is calculated by capitalizing the annual income a property owner is earning by using his or her land. T.C.A. § 67-5-1008(c) caps the amount greenbelt land can increase in value because of a reappraisal at six percent multiplied by the number of years since the latest reappraisal.

An appeals procedure is provided for adverse decisions by the assessor. To limit the fiscal impact and inequities of this tax break, a maximum of 1,500 acres for one owner in any one taxing jurisdiction is fixed, and affiliated ownership is to be included for any person with legal or equitable title in more than 50 percent of the land ownership. Noncontiguous tracts must be located in the same county to qualify as agricultural land for greenbelt purposes. A procedure is provided for determining annually additional taxes that would be payable if the land were assessed at its real value. If the land is subsequently converted to any other use, such cumulative taxes for the preceding three years (agricultural and forest) or five years (open space) – referred to as rollback taxes – must be paid on the first assessment roll following the conversion.

When the assessor determines that there is a liability for rollback taxes, the assessor notifies only the tax-collecting official. This official must then send a notice demanding payment to the responsible person.

The act that created the use value assessments provides a more sure and direct method for a municipality to preserve its open space. Cities and counties also are empowered to expend funds to acquire "the fee or any lesser interest ... necessary to achieve the purposes of this act" (T.C.A. § 67-5-1001–1050).

### **Collection**

When read together, T.C.A. § 67-1-701–702, T.C.A. § 67-5-1801, and T.C.A. § 67-5-2005 permit a municipality to collect its own property taxes (if authorized by its charter) or to turn over such collection to the county trustee. Generally, if the county trustee collects the municipality's taxes, the tax due date is the first Monday in October, and the delinquency date is the following March 1. The effect of the due and delinquency dates prescribed by the municipal charter or ordinance is outlined in the "Delinquent Property Taxes" section later in this chapter.

By the 10th of each month, the trustee must make settlement and pay the city its share

of taxes collected the previous month (T.C.A. § 67-5-1902). The trustee's office keeps the following commissions on taxes collected

- Up to \$10,000—6 percent;
- \$10,000 to \$20,000—4 percent;
- More than \$20,000—2 percent.

In computing the trustee's compensation, all state, county, school, and special funds are lumped together, and each of the political subdivisions must pay its respective portion of the above commissions (T.C.A. § 8-11-110).

A trustee who collects city taxes must "execute such bonds as may be required ... by the law or any ordinance of any city or town for the collection and prompt payment of all taxes due said city or town" (T.C.A. § 67-5-1901(b)).

A municipality's governing body may provide by ordinance or resolution for the early payment of property taxes and provide a taxpayer rebate as follows

- Two percent within 30 days of the due date, and
- One percent within 30 to 60 days of the due date.

If the county trustee has the authority established by T.C.A. § 67-1-702 to collect taxes any time after July 10 prior to the first Monday in October, a municipality's governing body by the same method may provide for the early payment of property taxes and give a taxpayer rebate as follows

- Three percent if paid by the end of July;
- Two percent if paid by the end of August; and
- One percent if paid by the end of September.

In the latter instance, the trustee may accept such payments at his or her discretion (T.C.A. § 67-5-1804).

The purchaser of a business is required to withhold an amount to cover any taxes payable on personal property until the seller produces a receipt from the municipal collector that all taxes, interest, and penalties have been paid. The purchaser's failure to do so makes him or her jointly liable for any such unpaid amounts (T.C.A. § 67-5-513).

### ***Partial Payments***

All trustees in all counties may accept partial payments of property taxes. In Metro Nashville, the minimum payment is no more than 15 percent or \$25, whichever is less (T.C.A. § 67-5-1801(e)).

### ***When Delinquent if Mailed***

"Any tax report, claim, return, statement, remittance, or other tax document required or authorized to be filed with or any payment made to the state or to any political subdivision thereof, which is ... transmitted through the U.S. mail to the state or political subdivision and postmarked no more than 24 hours subsequent to the last date for the timely filing of such document or payment shall not be considered delinquent" (T.C.A. §

67-1-107).

### ***Delinquent Property Taxes***

A municipality has the option to collect delinquent property taxes any one of four ways

- Under the provisions of its charter for the collection of delinquent property taxes;
- Under T.C.A. § 6-55-201–206;
- By the county trustee under T.C.A. § 67-5-2005 (a)-(c); or
- Under T.C.A. § 67-5-2005 (d).

If the municipality has the authority under its charter to collect its property taxes, but the charter makes no provision for the collection of delinquent property taxes, then the municipality may provide by ordinance for the collection of delinquent property taxes. (As a practical matter, it is unlikely that any municipal charter authorizes a municipality to collect its own property taxes but does not authorize it to collect delinquent property taxes.)

If a municipality uses the county trustee or the delinquent tax attorney to collect its delinquent property taxes, the municipality must certify its delinquent taxes to the trustee by April 1 of the second calendar year after the taxes become due.

T.C.A. § 67-5-2405 requires the county delinquent tax attorney to bring suit in the name of the county, in the county's behalf and for the benefit of any municipality that has certified a delinquent tax list.

Property certified to the county trustee shall be advertised and sold by the county trustee at the same time, in the same manner, and as a part of the county trustee's other sales of property for state and county taxes (T.C.A. § 67-5-2005).

T.C.A. § 67-5-2010(a)(1) provides that, "To the amount of tax due and payable, a penalty of one-half percent and interest of one percent shall be added on March 1 following the tax due date and on the first of each succeeding month except as otherwise provided in regard to municipal taxes."

Therefore, if the municipality collects its own current property taxes but turns the collection of its delinquent property taxes over to the trustee, the property tax due and delinquency dates, the penalties, and the interest are those set out in the municipality's charter or ordinance.

T.C.A. § 67-5-2010(b) provides that, in all instances in which current municipal taxes are collected by the county trustee, the following provisions and rules for collecting delinquent taxes that may be due to the municipalities, and none other, shall prevail and obtain, anything in this chapter to the contrary notwithstanding

- The taxes levied and assessed by such municipalities shall become due and delinquent on the date now provided by existing law; and

- If the municipal taxes are not paid on or before the date fixed for delinquency in the amount due and payable, a penalty of 0.5 percent and interest of one percent shall be added on March 1 following the tax due date and on the first day of each succeeding month.

In this circumstance, where the county trustee collects the municipality's current or delinquent property taxes, the property tax due and the delinquency dates remain those set out in the municipality's charter or ordinance; however, the penalty and interest prescribed by that statute prevail over the municipality's charter or ordinance and do not attach until March 1 following the tax due date.

A municipality is barred from collecting property taxes following 10 years after April 1 of the year in which such taxes became delinquent (T.C.A. § 67-5-1806).

T.C.A. § 67-5-1512 outlines the conditions under which taxpayers appealing their assessments must pay all or a part of the property tax and interest during the appeals process as a condition of the appeal.

Property taxes, interest, and penalties owed to the state, county, and municipality on property shall become and remain a first lien upon the property from January 1 of the year for which the taxes were assessed. Property taxes are also a personal debt of the property owners as of the same date (T.C.A. § 67-5-2101).

Cities have the authority to give foreclosed properties to private, nonprofit entities (T.C.A. § 67-5-2509(d)(2)).

### ***Extension of Due Date for Military Personnel Engaged in Hostilities***

T.C.A. § 67-5-2011 extends the due date of property taxes owed by persons in the armed services or who are called into active duty from a reserve or national guard unit and who are engaged in hostilities until 180 days after the conclusion of the hostilities or 180 days after the person is transferred from the area of hostilities, whichever is sooner.

### ***Intangible Personal Property***

The constitution allows taxing stocks, bonds, and other intangible personal property. Intangible personal property is classified and assessed as the legislature directs. Banks and other financial institutions may be taxed in such manner as the legislature provides, and these taxes are in lieu of the property tax on shares of stock, customers' accounts, or any other type of intangible property (Article II, Section 28). Cities do not tax intangible property. However, they do receive a share of the Hall Income Tax (see later section entitled "Hall Income Tax"), as well as revenue from property taxes on intangible property having no actual *situs* in this state paid by utilities and carriers and distributable to counties, municipalities, and taxing districts (T.C.A. § 67-5-1325).

### ***Property Tax Relief for the Elderly and Disabled***

Article II, Section 28, of the Tennessee Constitution provides that the legislature "shall



provide, in such manner as it deems appropriate, tax relief to elderly, low-income taxpayers through payments by the state to reimburse all or part of the taxes paid by such persons on owner-occupied residential property, but such reimbursement shall not be an obligation imposed directly or indirectly upon counties, cities, or towns.” It also authorizes the legislature to provide tax relief to totally and permanently disabled homeowners “as provided herein for the elderly.”

T.C.A. § 67-5-702 and T.C.A. § 67-5-703, respectively, provide state-reimbursed tax relief to people age 65 and older and to totally and permanently disabled homeowners under rules and regulations adopted by the state board of equalization. These property owners must meet maximum income requirements set annually in the state’s General Appropriations Act. The ceiling is revised yearly based on the cost-of-living adjustment for Social Security recipients. The tax relief applies to the first \$18,000 of the home’s full market value. T.C.A. § 67-5-704 provides state-reimbursed tax relief to severely disabled veterans and their surviving spouses on the first \$150,000 of the full market value of their homes, regardless of their total annual income.

The state board of equalization has issued rules and regulations governing the administration of T.C.A. § 67-5-701–704, including definitions, age requirements, disability requirements, widows of disabled veterans requirements, certification of ownership and residency requirements, income requirements, methods and handling of applications (including forms and documents), and decertification requirements (Rule 0600-3-.01 *et seq.*).

Three statutes authorize municipalities to create their own supplemental tax relief programs for the elderly. One is a pure tax relief statute, and two are tax deferral statutes. Under T.C.A. § 67-5-705, the city may, by resolution, adopt a program freezing the property tax of people age 65 and older whose annual incomes do not exceed \$12,000. The tax is frozen at the amount they paid in the tax year they reached 65. Improvements to the property are taxed as prescribed by the statute. In *Perkins v. Alexander*, the Chancery Court of Shelby County on January 10, 1980, declared that statute violated Article II, Section 28, of the Tennessee Constitution, which requires that all property be taxed according to its value, that taxes be equal and uniform within a taxing jurisdiction, and that tax relief for the elderly could not be imposed by the state upon local governments. Although that case has no formal precedential value, it is persuasive.

T.C.A. § 67-5-1515 allows a property tax freeze for certain elderly homeowners in Shelby County. This tax freeze is optional for the county governing body but would also apply to municipal taxes.

T.C.A. §§ 7-64-101 *et seq.* (Chapter 821 [Public Acts 1998] Deferral) authorize municipalities to *defer*, by resolution, taxes on principal residences owned by single people, married couples over the age of 65, and totally disabled people whose gross annual income is less than \$12,000. The city’s governing body may by a two-thirds vote

approve an increase in the gross income to \$25,000 a year; approval must be certified to the Tennessee Secretary of State. The tax deferral applies to the principal residence and a maximum of one acre of land and to a maximum of \$60,000 appraised market value. Improvements to the property are taxed as provided in the statute. The assessment of taxes continues on an annual basis, and the tax deferral continues until a terminating event such as death of the person(s) to whom the deferral was granted or sale of the residence. The deferred taxes constitute a lien on the property and earn 10 percent interest annually but are not subject to the statutory penalties for delinquent taxes. The schedule for payment of deferred taxes after a terminating event is set out in the statute.

T.C.A. §§ 7-64-201 *et seq.* (Chapter 659 [Public Acts 1980] Deferral) authorize municipalities by resolution to *defer* taxes on principal residences owned by taxpayers and their spouses over the age of 65, totally and permanently disabled taxpayers, and disabled veterans whose combined incomes do not exceed \$12,000 annually. The city's governing body may by a two-thirds vote approve an increase in the gross income to \$25,000 a year; approval must be certified to the Tennessee Secretary of State. The tax deferral is limited to the principal residence and one acre of land and to a maximum appraised value of \$50,000. A qualifying taxpayer who turned 65 on or before March 27, 1980, is entitled to a tax deferral on taxes in excess of his or her 1979 taxes, and a qualifying taxpayer who turned 65 after March 27, 1980, may defer any taxes in excess of the amount of taxes in effect the year the taxpayer turned 65. A qualifying taxpayer who purchases property after turning 65 may defer taxes in excess of the amount of taxes owed in the year the property was purchased. Improvements to property are taxed as provided in the statute. The statute's provisions for a tax lien and interest are similar to those in T.C.A. §§ 7-64-101 *et seq.* Termination of deferral events include death of the person(s) to whom the deferral was granted, sale of the residence, and change in the use of the property from the principal place of residence.

### ***Golf Courses as Farm Property***

Golf course playing-hole improvements are now included as farm property. Therefore, the property tax rate is 25 percent rather than 40 percent of the appraised value (T.C.A. § 67-5-501(3)).

### **In-Lieu-of-Tax Payments**

#### ***Tennessee Valley Authority In-Lieu-of-Tax Payments***

The Tennessee Valley Authority (TVA) pays five percent of gross power sales proceeds to the state in lieu of taxes. Counties and cities are allocated 48.5 percent of the increase in TVA payments made to the state above the amount received in the base year (fiscal year 1978). Counties receive 70 percent of this allocation, and cities receive 30 percent.

Distribution of the city share is based on population. Three percent of the earmarked

revenue is allocated to cities and counties impacted by TVA power plant construction. Cities that received TVA in-lieu-of-tax payments from the state before implementing the per capita formula continue to receive that amount in addition to the formula allocation (T.C.A. § 67-9-101–103). (For the most current per capita figure, see MTAS’s annual *Hot Topic* on state revenue estimates.)

### ***Utility Tax Equivalentents***

Tennessee cities that operate electric distribution systems are allowed to take tax equivalentents up to maximums prescribed by the Municipal Electric System Tax Equivalentent Law of 1987. This law replaces former statutory provisions and supersedes all charter or private act provisions.

The allowed payment is an amount equal to the property tax the system would pay if it were a private utility, plus four percent of the average of revenue minus power costs from electric operations for the preceding three fiscal years (T.C.A. § 7-52-304). A city’s governing body is allowed to prescribe the amount up to the maximum after consulting with a power board to determine the “fair share of the cost of government” borne by the municipality on behalf of the utility. The act also provides for tax equivalentent payments to the county government and to neighboring municipalities served by a city’s electric distribution system (T.C.A. § 7-52-301–310).

Another act contains almost identical provisions and is applicable to gas systems owned and operated by municipalities, counties, and metropolitan governments. It, too, supersedes the provisions of any charter or private act (T.C.A. § 7-39-401–406).

### **Community Development Block Grants**

#### ***In-Lieu-of-Property-Tax Expenditure Reports***

T.C.A. § 6-54-124 requires municipalities that receive Community Development Block Grants (CDBG) and municipalities and industrial development corporations that are party to an in-lieu-of-property-tax agreement to make a report addressing the expenditures of such funds. In addition, municipalities must place a copy of the report in the main branch of their public libraries or on the Internet.

#### ***Municipal Utility In-Lieu-of-Tax Payments***

Municipalities are authorized to request by resolution in-lieu-of-tax payments from any public works (T.C.A. § 7-34-115). “Public works” is defined by T.C.A. § 7-34-104(3) as water, sewer, gas or electric heat, light, power, or parking facilities. Except for municipal gas and electric plants, these payments may not exceed the amount of taxes payable on private property of a similar nature (T.C.A. § 7-34-115). Gas and electric in-lieu-of-tax payments are computed under T.C.A. § 7-39-404 and T.C.A. §§ 7-52-301 *et seq.* respectively.

### **Housing Authority In-Lieu-of-Tax Payments**

Housing authorities “shall agree” to pay in-lieu-of-tax payments or special assessments not to exceed the cost of services, improvements, or facilities provided (T.C.A. § 67-5-206). A similar requirement provides that nonprofit housing corporations providing low-cost housing for elderly or handicapped people must agree to make in-lieu-of-tax payments for any project exceeding 12 units occupied after January 1, 1990 (T.C.A. § 67-5-207).

Municipalities with housing authorities, except in Davidson County, may delegate to the authority by a majority vote the right to negotiate and accept payments in lieu of taxes from lessees operating property restricted under the Low Income Housing Tax Credit Program. The housing authority must submit the agreement to the local legislative bodies of affected jurisdictions for approval. Housing authorities must file reports by October 1 of each year on property owned by them that is subject to in-lieu-of-tax payments (T.C.A. § 13-20-104).

### **Golf Courses**

If a government body leases a golf course to a private operator, the operator must make in-lieu-of-property-tax payments equal to what the *ad valorem* taxes would be if the course were private property (T.C.A. § 67-5-203(c)).

## **Local Taxes**

### **Local Option Sales Tax**

A municipality may levy a local sales tax, but the combined rate of the county’s levy and that of the municipality may not exceed 2.75 percent. A county’s levy supersedes the municipality’s levy. Therefore, if the county levy is 2.75 percent, a municipality in that county may not levy a local sales tax. If the county levy is 2.25 percent, a municipality could levy an additional 0.5 percent. Regardless of the local levy amount, it must be approved by a majority vote in a referendum in the affected municipality. An ordinance calling for such a referendum may specify a period for which the tax shall be effective (T.C.A. §§ 67-6-701 *et seq.*). A statewide uniform local sales tax rate of 2.5 percent applies to intrastate telecommunications services, and a uniform local rate of 1.5 percent applies to interstate and international telecommunication services except for services to businesses that are exempt. Revenues will be used for the same purposes as other local sales tax revenues (T.C.A. § 67-6-702).

Unlike the state sales tax, the local option tax is not applied to the full purchase cost of expensive items. The local tax now applies to the first \$1,600 of the purchase price. Because of this cap, the purchaser of an economy car and the buyer of a Rolls-Royce pay the same local option sales tax (T.C.A. § 67-6-702).

If a countywide local option sales tax is levied by referendum, then state law requires that half of any county levy be distributed on the same basis as the county property tax

for schools (average daily attendance formula). The other half is distributed to the jurisdictions where collection took place. If it was collected in a city, it is distributed to that city. If it was collected outside the city, it is distributed to the county. However, an agreement between a county and a city may provide for a different distribution. One hundred percent of a city-only levy is general fund revenue subject to appropriation by the governing body, but it would terminate at the end of the city's current fiscal year if the county makes a levy at the same or higher rate (T.C.A. § 67-6-703, T.C.A. § 67-6-712).

The local option sales tax is a *situs* tax. That is, the geographic location where the sale is made or the service is delivered determines which jurisdiction receives the collected tax.<sup>2</sup> A municipality receives the tax if the transaction occurs within its corporate limits. Municipalities could enhance their revenues by verifying the *situs* code for every business located within their corporate boundaries. (For a complete discussion of how to check these codes, please see *Municipal Finance Report: A Method of Revenue Enhancement Verifying Local Option Sales Tax Distribution* by Harold Yungmeyer, The University of Tennessee Municipal Technical Advisory Service, 1989.)

For a period of 15 years, a newly annexed area or newly incorporated city gives the county the same amount of local option sales tax and wholesale beer tax it was collecting on the date of incorporation (T.C.A. § 67-6-712).

#### ***Local Wholesale Beer Tax***

Wholesale beer deliveries to retail outlets in a city or county are taxed at 17 percent of wholesale prices (excluding state and federal privilege taxes levied after May 3, 1983). The tax is paid by each beer wholesaler directly to the city or county, and monthly sales reports are made to the state Department of Revenue and to each city and county. A city should check that tax payments are being received from beer wholesalers serving the area based on deliveries to all retail beer outlets in the city. An investigation by the Department of Revenue may be requested if there is doubt about administration of the tax (T.C.A. § 57-6-101–118). For a period of 15 years, a newly annexed area or newly incorporated city gives the county the same amount of wholesale beer tax it was collecting on the date of incorporation (T.C.A. § 57-6-103).

#### ***Local Mixed-drink Tax***

Cities that have passed a liquor-by-the-drink referendum may levy and collect a local privilege tax from businesses selling alcohol for on-premises consumption based on the schedule provided in T.C.A. § 57-4-301(b)(2).

#### ***Retail Liquor License Inspection Fees***

Cities may levy inspection fees on retail liquor licensees based on wholesale liquor

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<sup>2</sup>Provisions added to the local sales tax law to implement the Streamlined Sales Tax Agreement change the sourcing of delivered items, but these provisions do not take effect until July 1, 2007. Therefore, they have not been included here.

prices. The fees may not exceed eight percent in counties with a population of less than 60,000 and in counties where premier tourist resort cities are located, or five percent in other counties. Populations are to be taken from the most recent federal census (T.C.A. § 57-3-501).

### **Business Taxes**

The business tax is “in addition to all other privilege taxes” and is intended by the legislature to be in lieu of any other *ad valorem* tax on “inventories of merchandise held for sale or exchange” (T.C.A. § 67-4-701).

The Business Tax Act establishes five classifications of businesses that are taxable by cities at gross receipts rates ranging from one-eighth to one-sixtieth of one percent, in addition to a minimum tax of \$15. The Tax Reform Act of 2002 (Chapter No. 856) increased these rates by 50 percent, but revenues from these increases accrue only to the state (T.C.A. § 67-4-708–709). A city must pay the state 15 percent of the total collected business tax under rates that existed before September 1, 2002, and 100 percent of revenues produced by the 50 percent increase in rates effected by the Tax Reform Act of 2002. An annual report must accompany the payment by June 20 for each year ending May 31. The Department of Revenue will accept quarterly or monthly installment payments (T.C.A. § 67-4-724). Transient vendors must pay a \$50 minimum tax for each 14-day period of business in a municipality, but they are not subject to the percent of gross receipts portion of the tax (T.C.A. § 67-4-702, 709).

Any other “regulatory fee, inspection fee, or special tax or fee of any type or kind” on beer is explicitly prohibited (T.C.A. § 67-4-728).

The Department of Revenue is authorized to collect for a city, but the department’s costs of such collection are too high to make this procedure feasible (T.C.A. § 67-4-726).

The Tax Reform Act of 2002 eliminated a provision that allowed municipalities and counties to levy rates lower than those set out in state law. This act also provides that personal property tax credits, which apply to taxes that accrue to the municipality, do not apply to revenues produced by rate increases affected by the Tax Reform Act of 2002 and accruing to the state.

Businesses are required to file tax returns with the city tax collector on forms furnished by the collector. Businesses must list the gross amount of sales tax owed the state, the amount of deductions for sales tax purposes, and total gross sales. This form must be accompanied by the appropriate business tax payment (T.C.A. § 67-4-715).

Contractors who perform work outside their home jurisdictions are required to pay the business tax in the jurisdiction where the contract work is performed if they receive \$50,000 or more for a job. The home jurisdiction may not impose any business tax on this same activity (T.C.A. § 67-4-708(a)).

Due and delinquent tax dates are fixed, and the Sales Tax Law provides for collecting delinquent taxes using distress warrants. A municipality may hire an attorney or agent to collect delinquent business taxes but must adopt the permissive state law allowing this by a two-thirds vote of the governing body (T.C.A. § 67-4-714–715, 719; T.C.A. § 6-55-301–304). The municipal tax collector is required to collect delinquent taxes, penalties and interest within six months of the taxes becoming delinquent, or the delinquent taxes will be audited and collected by the Commissioner of Revenue. If the commissioner collects the delinquent taxes, all the funds will be deposited with the state (T.C.A. § 67-4-719). There is a six-year statute of limitations beginning January 1 of the year in which the tax return and payment are due (T.C.A. § 67-1-1501).

### ***Hotel/Motel Tax***

Home rule municipalities, metropolitan governments, and certain cities by private act or ordinance may levy a hotel/motel tax. For home rule municipalities, the hotel/motel tax applies to motel occupancies of fewer than 30 days (T.C.A. § 67-4-1401). The tax levied by a home rule municipality may not exceed five percent of the consideration charged for occupancy. It is collected when the customer is invoiced and remitted by the operator no later than the 20th of each month. Penalties and interest for delinquencies are authorized under T.C.A. § 67-4-1408, which allows home rule municipalities to use distress warrants to collect the tax. Municipalities that did not impose a hotel/motel tax by May 12, 1988, are prohibited from adopting such a tax if the county where the city is located already levies the tax. (This prohibition was removed for cities in Rutherford, Williamson, Blount, Dickson, Hardin, and Shelby Counties, and for cities that have constructed a project under the Convention Center and Tourism Development Financing Act, codified as T.C.A. §§ 7-88-101 *et seq.* Because of the wording of the exemption in subsection (c) of 67-4-1425, this exemption might apply now or in the future in other counties not listed here.) Cities in certain counties exempted under subsection (c) of T.C.A. § 67-4-1425 are limited to a five percent rate and cities in those counties incorporated under the general law may levy the tax by ordinance passed by a two-thirds vote of the governing body. The tax levied by these cities may not exceed five percent of the consideration charged by the operator, and revenues from the tax by cities in Blount County must be used for tourism as defined in T.C.A. § 7-4-101(8). If a city has already enacted the hotel/motel tax, the county may impose a hotel/motel tax only outside that city (T.C.A. § 67-4-1425).

### ***Tax Refunds***

T.C.A. § 67-1-707(b) establishes an administrative method for refunding municipal taxes collected erroneously or illegally. The claim for a refund must be made within one year of payment, or it is barred.

## **State Shared Taxes**

### ***State Sales Tax***

The state sales and use tax is seven percent (except for food, on which the rate

remains six percent), plus an additional 2.75 percent on the portion of the purchase price of single articles subject to local sales taxes from \$1,600.01 through \$3,200. The 0.5 percent increase adopted in 1992 is earmarked for K-12 education. The 2002 increase from six percent to seven percent on nonfood items accrues to the state general fund. Cities receive 4.4194 percent of the remaining 5.5 percent state tax after deductions, including funds to support MTAS. A city's share is calculated by computing the city population as a portion of all city residents in the state (T.C.A. § 67-6-103). (For the most current per capita figure, see MTAS's annual *Hot Topic* on state revenue estimates.)

A city that elects Tennessee river resort status under T.C.A. § 67-6-103(a)(3)(F) will receive 4.5925 percent of the taxes actually collected within the city rather than its normal allocation.

T.C.A. § 67-6-221 levies a 7.5 percent sales tax on interstate telecommunications services sold to businesses. Revenues from 0.5 percent of this tax are distributed to municipalities and counties based on population and must be used for the same purposes as local sales tax revenues.

### ***Sales Tax Holiday***

Sales of clothing and school supplies costing \$100 or less per item and computers costing \$1,500 or less per item will be exempt from state and local sales taxes beginning on the first Friday in August and lasting through the following Sunday of August, 2006, and subsequent years. Municipalities are substantially held harmless for local sales tax losses (T.C.A. § 67-6-393, 67-6-710).

### ***State Beer Tax***

The state levies a \$4.29 per barrel tax on the manufacture, sale, and transportation of beer. Cities are allocated 10.05 percent of this money on a per capita basis without regard to legal beer sales in the community. Another 10.05 percent of the revenue is allocated to counties (T.C.A. § 57-5-205). Chapter No. 355, Public Acts of 2003, as amended, reduces revenues accruing to cities from this tax by 4.5 percent. (For the most current per capita figure, see MTAS's annual *Hot Topic* on state revenue estimates.)

### ***State Mixed-drink Tax***

In addition to a state privilege tax, the state levies a 15 percent gross receipts tax on wine and spirit sales (T.C.A. § 57-4-301(c)). The tax is earmarked for education and local government. Cities receive 25 percent of the tax collected from businesses within their boundaries. Chapter No. 355, Public Acts of 2003, as amended, reduces revenues accruing to cities from this tax by 4.5 percent (T.C.A. § 57-4-306).

Counties with a population of more than 250,000 (based on the last federal census) are required to pay 30 percent of the portion of the state tax on mixed drinks distributed to the counties to cities in their counties with a population of more than 150,000. Chapter



No. 355, Public Acts of 2003, as amended, reduces revenues accruing to cities from this tax by 4.5 percent (T.C.A. § 57-3-306(c)).

### ***Excise Tax on Banks***

Generally, the excise tax on banks is three percent of net earnings (excluding interest from state bonds) minus seven percent of *ad valorem* taxes, with a complicated formula for determining a minimum tax based on a bank's capital stock. Local tax rates determine the payment allocation between the county and the city, so a city must levy a property tax to receive any funds. Another formula is prescribed for allocating such revenue if a bank has branches in more than one city and/or county. Chapter No. 355, Public Acts of 2003, as amended, reduces revenues accruing to cities from this tax by 4.5 percent (T.C.A. § 67-4-2017).

### ***Hall Income Tax***

Three-eighths of the six percent state tax on certain dividend and interest income paid by taxpayers is remitted by the state to the city in which the taxpayers live. Payment is made for all such taxpayers no later than the following July 31 based on taxes collected in that city in the preceding fiscal year. Chapter No. 355, Public Acts of 2003, as amended, reduces revenues accruing to cities from this tax by one-sixth (T.C.A. § 67-2-119).

Like the local option sales tax, the Hall Income Tax is a *situs* tax. Cities should check *situs* codes and file *situs* reports to assure that all revenue due to the city is actually received.

### ***Tax Information***

Certain information and data that taxpayers report to the state are open to city officials whose "official duties require such inspection or disclosure for tax administration purposes" (T.C.A. § 67-1-1704). Any person who divulges or uses this information and data for any purpose other than collecting municipal revenues may be convicted of a felony that carries a maximum \$5,000 fine, up to five years imprisonment, or both (T.C.A. § 67-1-1709).

## **Litigation Tax**

### ***Municipal***

A municipality may levy a privilege tax on litigation in all cases in municipal court. The tax must be established by ordinance or resolution and may not exceed the state litigation tax. The tax is collected upon all judgments against the defendant in municipal court (T.C.A. § 67-4-601; Op. Tenn. Atty. Gen. No. 81-598 (Nov. 9, 1981; T.C.A. § 16-18-305).

### ***State***

The state litigation tax of \$13.75, like the municipal litigation tax, is collected upon all

judgments against the defendant in municipal court. The tax applies in all civil suits and to all criminal charges, upon conviction or by order, instituted in city courts except that the tax for violation of an ordinance on using a public parking space is \$1. When the municipal court is exercising general sessions jurisdiction, the litigation tax will be levied and collected in the same manner as a general sessions court.

### ***Cable TV/Telecommunications***

Municipal governments may grant franchises to privately owned utilities that use public rights of way. The majority of city charters contain procedures for granting franchises. Most franchises require the utility to pay a fee to reimburse the community for using its streets and rights of way.

Within limits established by the Federal Communications Commission (FCC), the Cable Television Consumer Protection Act of 1992, and the 1996 Telecommunications Act, cities may franchise and regulate cable TV operators and even run their own cable systems. The 1992 act provides local governments with some control over customer service standards and rates for “basic” service.

Customer service standards are prescribed by the FCC (47 CFR 76.309). A city may require its cable TV operator(s) to comply with the standards either through the franchise or by ordinance in addition to the franchise. The standards include

- Operating a 24-hour telephone service that answers 90 percent of calls within 30 seconds;
- Establishing a “conveniently located” office; and
- Providing “appointment windows” for installation and repair.

A city must notify the cable company in writing 90 days in advance that it intends to enforce the customer service standards.

Cable TV rates may be regulated where there is no “effective competition.” Because of the act’s definition of this term, it means “just about everywhere.” Cities may regulate only basic service. This is the lowest cable tier, which includes local broadcast, “must-carry,” and public TV stations. The standards for reasonable rates are based on national averages and the system’s number of

- Channels;
- Channels that are satellite signals; and
- Customers.

The FCC-prescribed standards are structured so that basic service rate regulation by Tennessee cities has yielded few successes in holding down rates. Higher levels of service, including additional tiers, premium channels (HBO, Disney, Showtime, etc.), and pay-per-view services, are not rate regulated on any level of government. State law delegates regulatory power to cities (and counties for unincorporated territories) and outlines the conditions, rights, and obligations of cities, counties, and franchise holders for providing cable TV services. Cities are prohibited from granting overlapping cable TV

franchises on terms more favorable than those in any existing franchise. Before granting a cable franchise, a city must hold a public hearing. A number of specific issues must be considered at the hearing (T.C.A. § 7-59-101–208).

Cities under the general law modified city manager-council charter have authority to acquire, own, and operate cable TV systems (T.C.A. § 6-33-101). Under the 1992 Cable Act, all cities may build and operate a cable system in competition with their existing franchise without granting themselves a franchise.

Municipally owned electric utility systems now have the authority to construct and operate cable TV systems in their service areas. However, the cable operation may not be subsidized by the municipality or by the electric system, and it must pay tax equivalents using the same method prescribed for the electric system (T.C.A. § 7-52-401–407).

In addition to cable TV companies, cities have issued franchises to private companies providing gas, electric, water, steam, and public transportation. State law prohibits a company from acquiring the franchise or property of another company operating under a city franchise without the city's permission (T.C.A. § 6-54-109).

Municipalities probably do not have the authority to franchise a telephone/telecommunications company or to collect a franchise fee based on the company's income. But, cities may require the firm to pay "police power" rent, i.e., a fee that covers the municipality's direct costs of the telephone/telecommunications company's use of rights of way (T.C.A. § 65-21-103, T.C.A. § 65-21-203). (Also see *City of Chattanooga v. BellSouth Telecommunications*, (unreported) 2000 W.L. 122199 (Tenn. Ct. App. 2000).)

### ***City Tag or Wheel Tax***

The terms "tag tax" and "wheel tax" commonly are used to describe the regulatory fee levied by some cities on motor vehicles using city streets. T.C.A. § 6-55-501 provides that "no tax (for the privilege of driving any motor vehicle upon streets) under any guise or shape shall hereafter be assessed, levied, or collected by any municipality." However, T.C.A. § 6-55-502 somewhat equivocally provides that the law shall not "abridge [a city's] right to require city automobile tags." The same section also authorizes cities to operate automobile safety lanes and inspection stations. Cities are prohibited from imposing a wheel tax on vehicle owners living outside the city (T.C.A. § 7-51-702).

State vehicle license plates must be stamped in a way that will provide space to display a municipal wheel tax sticker. This provision supersedes any local requirement respecting the display of such stickers (T.C.A. § 55-4-103(b)). A city may contract with the county clerk of the county in which it is wholly or partially located to collect its motor vehicle regulatory fees when motorists obtain their state licenses from the clerk (T.C.A. § 7-51-703).

### ***Refuse Collection Fees***

Many cities have a long history of charging for collecting garbage and other refuse. Some charge only for pickups from businesses. The Solid Waste Management Act of 1991 explicitly authorizes cities to charge solid waste disposal fees, which may be collected through electric utility bills (T.C.A. § 68-211-835). Cities that fund waste disposal by special assessment are allowed to bill homeowners on their property tax notices (T.C.A. § 67-5-103).

A municipality may not collect amounts owed for solid waste disposal charges, or make refunds of overpayments, if the payment is more than 36 months past the date the payment was first due (T.C.A. § 28-3-304).

### ***Stormwater Management Fees***

T.C.A. §§ 68-221-1101 *et seq.* allow municipalities to levy fees for the privilege of discharging stormwater. Persons who do not discharge stormwater through the stormwater or flood control facilities of a municipality, including owners and operators of agricultural land, are exempt from stormwater fees.

## **Petroleum Tax**

### ***Gas Tax***

Public Acts 1997, Chapter 316, effective January 1, 1998, entirely repealed the previous laws governing petroleum taxes (the “gas tax”), and replaced it with the Petroleum and Alternative Fuels Tax Law, codified at T.C.A. §§ 67-3-1201 *et seq.* The Petroleum and Alternative Fuel Tax statutes were subsequently transferred to T.C.A. §§ 67-3-101 *et seq.* That law imposes a state tax on various petroleum products sold in Tennessee. Most of the proceeds from this tax go into the state highway fund, state sinking fund, state general fund, and other state funds or programs, but the law also provides that counties and municipalities receive a share of the tax. However, tax rates and formulas for the distribution of those taxes, including the share of counties and municipalities, cannot be determined solely from the face of the law. Those rates and formulas require extensive reference to the previous laws governing petroleum taxes and to the public acts upon which they were based, particularly Public Acts 1985, Chapters 419 and 454; Public Acts 1986, Chapter 931; and Public Acts 1989, Chapter 46.

The current state tax rate on various petroleum products sold in Tennessee, the share of those taxes that counties and municipalities receive, and formulas for distribution of the shares of counties and municipalities are reflected below.

### ***Gasoline Tax: 20 Cents Per Gallon (T.C.A. § 67-3-201)***

Counties and municipalities receive the following portions of 11 cents

- Counties — 28.6 percent\*
- Municipalities — 14.3 percent\*

\*Minus one percent for administrative costs  
(T.C.A. § 67-3-901(b) and (c), T.C.A. § 54-4-103, T.C.A. § 54-4-204).

Counties and municipalities receive the following portions of 3 cents

- Counties — 66-2/3 percent\*
- Municipalities — 33-1/3 percent\*

\* Minus one percent for administrative costs  
(T.C.A. § 67-3-901(c)(2), T.C.A. § 67-3-901(f)(2), T.C.A. § 67-3-901(i)).

Limited funding from the gasoline tax for a utility relocation loan program also is authorized under T.C.A. § 67-3-901(b)(5) and (j).

***Diesel Fuel Tax: 17 Cents Per Gallon***  
**(T.C.A. § 67-3-202)**

Counties and municipalities receive the following portions of 12 cents

- Counties — 24.75 percent
- Municipalities — 12.38 percent

(T.C.A. § 67-3-905; Op. Tenn. Atty Gen. No. 86-136).

***Prepaid Diesel Fuel Tax***  
**(T.C.A. § 67-3-1309)**

A prepaid user diesel tax is levied on the passenger cars and trucks (based on their weight) of certain users of diesel fuel for agricultural purposes, according to the schedule laid out in T.C.A. § 67-3-1309. Counties' share of that tax is 24.75 percent; municipalities' share is 12.38 percent (T.C.A. § 67-3-905).

***Compressed Gas Tax: 13 Cents Per Gallon***  
**(T.C.A. § 67-3-1113)**

Counties and municipalities receive the following portions of 9 cents

- Counties — 24.75 percent
- Municipalities — 12.38 percent

(T.C.A. § 67-3-905).

***Liquified Petroleum Tax: 14 Cents Per Gallon***  
**(T.C.A. § 67-3-1102)**

Counties and municipalities receive the following portions of 9 cents

- Counties — 28.28 percent
- Municipalities — 14.14 percent

(T.C.A. § 67-3-908(a)).

Counties and municipalities receive the following portions of 1 cent

- Counties — 66.6 percent\*
- Municipalities — 33.3 percent \*

\* Minus one percent for administrative costs (T.C.A. § 67-3-908(b)).

Except where specifically indicated otherwise

- Fifty percent of the counties' shares are divided equally among the 95 counties, 25 percent on the basis of area and 25 percent on the basis of population;
- Municipalities' shares are divided among them based on the population each municipality bears relative to the aggregate population of all municipalities, according to the federal census or a special census as prescribed by T.C.A. § 54-4-203. (T.C.A. § 67-3-901(b), (c), (f)(2) and (i); T.C.A. § 67-3-905; T.C.A. § 67-3-1108; T.C.A. § 54-4-103; and T.C.A. § 54-4-204; Op. Tenn. Atty. Gen. No. 86-136); and
- The money each individual municipality receives under the Petroleum and Alternative Fuels Tax Law is paid into the municipality's state street aid fund and is required to be administered and spent under the law that governs that fund (T.C.A. § 54-4-103, T.C.A. § 54-4-204). (For an outline of what expenditures are authorized under the law governing the state street aid fund, see *State Street Aid Fund Expenditures: On the Road to Understanding*, Ron Darden, The University of Tennessee Municipal Technical Advisory Service, January 2003).

### ***Special Privilege Tax; Export Tax***

T.C.A. § 67-3-1303 levies a special privilege tax of 1 cent per gallon on all petroleum products, and T.C.A. § 67-3-1306 levies an export tax of one-twentieth of 1 cent per gallon on certain petroleum products exported from Tennessee. Ninety-eight percent of the proceeds from these taxes are paid into the state highway fund, and two percent is paid into the state general fund for administrative purposes. From the actual proceeds of those taxes, there is established a local government fund of \$12,017,000. "The local government fund shall be used solely for county roads and city streets." Counties receive from this fund the monthly sum of \$381,583 based on county population; municipalities receive from the fund a monthly sum of \$619,833, based on municipal population<sup>3</sup> (T.C.A. § 67-3-2006).

### ***Local Option Gasoline Tax for Public Transportation***

T.C.A. §§ 67-3-2101 *et seq.* authorize municipalities and counties to levy a local gasoline tax of 1 cent per gallon to fund public transportation systems, but no local government has used this authority.

## **Population Counts**

Most state-shared taxes are distributed on the basis of population data certified by the Tennessee State Planning Office as of July 1 each year. A rapidly growing city may take, at its expense, three citywide censuses between federal decade counts to keep its revenue current. After the local census is certified by the State Planning Office, the new

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<sup>3</sup>\$10,000 per month is deducted from the municipalities' share to help support The University of Tennessee training program, which is now housed at MTAS.

population count is used to compute state-shared revenues the following July (T.C.A. § 67-6-103(b)(3), T.C.A. § 54-4-203(b)). Special censuses that count newly annexed residents of a city are not subject to the three-per-decade limit (T.C.A. § 6-51-114). (See *Special Censuses: Ruminating About Enumerating?* by Mary Beatty and Rebecca Crowder, The University of Tennessee Municipal Technical Advisory Service, February 1994.)

## Chapter Eight

# Capital Funds

The Local Government Public Obligations Act of 1986 (codified in T.C.A. § Title 9, Chapter 21) provides a “uniform and comprehensive statutory framework authorizing any local government to issue general obligation bonds and revenue bonds for public works projects, general obligation refunding bonds, revenue refunding bonds, bond anticipation notes, capital outlay notes, grant anticipation notes, and tax anticipation notes, and to authorize the destruction of bonds, notes, and coupons” (T.C.A. § 9-21-102). A subsequent statute repealed most of the old authorizations for local government debt scattered throughout the code (Acts of 1988, Chapter 750).

### The Local Government Public Obligations Act of 1986

The Local Government Public Obligations Act of 1986 is both comprehensive and flexible. It provides relatively straightforward procedures for local governments to borrow money for almost any reasonable public purpose. In addition to the general provisions in Part 1 and Part 4, the legislation contains the following parts relevant to cities

- Part 1: General provisions applicable to all bonds and notes issued by local governments.
- Part 2: General Obligation Bonds—When issuing general obligation bonds, a governing body pledges the “full faith and credit” of the city. Bond buyers are promised that the taxes necessary to pay off the bonds will be raised.
- Part 3: Revenue Bonds—Revenue bonds do not pledge full faith and credit of the city. They promise bond holders payment from the income of a revenue-generating facility, such as a water system, or from an earmarked revenue source, such as a city’s local option sales tax.
- Part 4: General provisions governing the issuance of all notes by local governments.
- Part 5: Bond Anticipation Notes—Notes are used for shorter-term debt. Anticipation notes are issued when a city wants to delay issuing bonds until the costs of several projects can be added together into one bond issue or until the bond market changes and long-term interest rates decline.
- Part 6: Capital Outlay Notes—These notes are used to borrow money for intermediate periods of from one to 12 years.
- Part 7: Grant Anticipation Notes—Some federal grants require a city to spend its own money to carry out a project, then apply for reimbursement. These notes allow the city to borrow funds for the front-end costs.
- Part 8: Tax Anticipation Notes—Some jurisdictions that do not maintain adequate reserves have to borrow operating funds each year to get through the lean months before annual property tax payments are received.
- Part 9: Refunding Bonds—Sometimes cities have to sell bonds when interest rates are high. If rates drop significantly a few years after the bonds are sold,



refunding procedures allow the community to issue new bonds at the lower interest rate and use money borrowed with the new bonds to pay off the old, high-interest debt.

### ***Debt Limit***

There is no debt limit under the act. “Bonds or notes may be issued under this chapter notwithstanding and without regard to any limit on indebtedness provided by law” (T.C.A. § 9-21-103).

### ***Allowable Projects***

The definition section of the act has a long list of allowable public works projects, including everything from abattoirs to zoos. The list and the accompanying catchall provisions should cover most projects a community may want to fund (T.C.A. § 9-21-105(21)).

If a city has used available funds to start a public works project, a bond issue may include money to replace those funds (T.C.A. § 9-21-109).

### ***Powers of Local Governments***

The act includes a comprehensive list of local government powers to issue debt, use the borrowed money, and pay the obligation. Cities are authorized to undertake bond-funded projects with other local governments and with the state or federal governments. They may build projects up to 20 miles outside the city limits. They may levy taxes on only a portion of the city to finance a project that benefits only that portion of the community. They may establish fees, tolls, or other charges and promise their bondholders that the revenue will be earmarked to pay off the debt. The act also includes authority to lease public works projects. Cities may use this authority to structure public/private partnership agreements (T.C.A. § 9-21-107, 214).

### ***Limitations on Local Governments***

The act provides that “no local government shall engage in the construction of a public works project wholly or partly within the legal boundaries of another local government except with the consent of the governing body of the other local government” (T.C.A. § 9-21-107(1)).

## **Process for Issuing Debt**

### ***General Filing Requirements***

Within 45 days following the issuance or execution of a finance transaction, the city must submit a report to the state director of local finance in the comptroller’s office. This report must include

- A brief description of the transaction;
- The issuance and continuing costs of the transaction;
- A copy of the IRS information return, if applicable;

- A description of any continuing disclosure obligations;
- A copy of the offering document, if any;
- Other information required by the funding board.

When a municipality discovers a failure to file as required above, or an error in a filing, it may seek permission from the director of local finance to do a late filing. The director may order a late filing upon discovery of noncompliance. The municipality must file the required information within 15 days.

The funding board may exempt from these disclosure requirements de minimus transactions, transactions in which the municipality is required to participate in a financing program, a transaction that is a conduit for a nongovernmental entity, and transactions in which cost disclosure is inconsistent with the intent of this law (T.C.A. § 9-21-151).

### ***General Obligation Bonds***

The city council adopts an initial bond resolution stating

- The maximum dollar amount of bonds to be issued;
- The project for which the bonds are to be issued;
- The maximum interest rate the bonds will be allowed to bear; and
- A statement of revenues to be used to pay the bonds (T.C.A. § 9-21-205).

The resolution may be adopted at a regular or a special meeting with only a majority vote. It takes effect immediately upon adoption and is not subject to veto (T.C.A. § 9-21-108).

The city publishes the resolution with a notice advising the community that if 10 percent of the registered voters present a petition calling for a referendum within 20 days, an election will be held to authorize the bonds (T.C.A. § 9-21-206). If a petition is presented to force a referendum, the bonds may not be issued unless a majority of voters approve the issue. However, there is one exception: If three-fourths of the governing body votes that an emergency requires issuing general obligation bonds for water or sewer purposes, then a petition may not force a referendum (T.C.A. § 9-21-207).

The city council may act on its own to hold an election to determine if the voters want to issue general obligation bonds for a project (T.C.A. § 9-21-208). The code establishes procedures for holding bond elections. If an issue is not approved by the voters, then the city must wait at least three months before raising the proposition again (T.C.A. § 9-21-209–212).

In the process for the bond sale, the city prepares an official statement, which serves as a sales brochure for the debt issue and which normally is prepared with a financial adviser's help. The city decides whether it wants to pay one of the national rating agencies, such as Moody's or Standard & Poor's, to issue a rating for the bonds and whether it wants to purchase bond insurance to further assure lenders they will get their

money back.

The city adopts a final bond resolution authorizing the sale and a tax resolution affirming that annual taxes will be levied to pay bond principal and interest (T.C.A. § 9-21-215). To assure potential lenders that all legal requirements have been met, cities employ lawyers who specialize in bond issues (bond counsel) to prepare resolutions and other legal documents associated with the issue.

The city advertises the bond issue five days before the sale date either in a financial newspaper having national circulation or by electronic communication system generally available to the financial community. If the bond issue is for \$5 million or less, the sale must be advertised as provided above or in a newspaper having general circulation in the municipality (T.C.A. § 9-21-203).

General obligation bonds are sold by competitive bid (T.C.A. § 9-21-203). Bonds may be issued for up to 40 years, but the length of the issue may not “exceed the reasonably expected economic life of the project being financed” (T.C.A. § 9-21-213(a)). General obligation bonds must be sold for at least 98 percent of the face value of the indebtedness, known as “par” (T.C.A. § 9-21-202).

### **Revenue Bonds**

Issuing revenue bonds is similar to issuing general obligation bonds, but there are no general law provisions for petitioners to force a referendum on revenue bonds. They may be sold by bid or negotiation for at least 97 percent of par value (T.C.A. § 9-21-302–303).

Lenders providing money through revenue bonds must look for repayment to the revenue produced by the public works being financed. Therefore, revenue bond covenants frequently include detailed promises about how the city will operate its revenue-generating investment and handle its finances. Cities have the authority to make covenants about insuring and maintaining a public works project, keeping city books, performing audits, and many other operational details. There may be interest rate swap or exchange agreements, agreements establishing interest rate floors or ceilings, and other interest rate hedging agreements relative to revenue bonds (T.C.A. § 9-21-306).

### **Notes**

Bond anticipation notes may be issued for no more than two years from the date of issue. The state director of local finance must approve the issue and may approve two extensions of two years each for a six-year total. During such an extension period, the city has to begin retiring the debt (T.C.A. §§ 9-21-501 *et seq.*).

Capital outlay notes also must be approved by the director of local finance. Several time frame options are available, including three-year notes with two three-year renewal periods, ten-year notes for purchasing land, and 12-year notes. Twelve-year capital

outlay notes totaling less than \$2 million must be sold at a competitive public sale or by an informal bid process. Twelve-year capital outlay notes totaling more than \$2 million must be sold at a competitive sale (T.C.A. §§ 9-21-601 *et seq.*).

Grant anticipation notes may be issued for various public works projects. They are secured only by the pledge of grant funds under contract between the federal or state government and the city. However, the interest on such grant anticipation notes may be a general obligation of the city. Grant anticipation notes may be issued for three years or for seven years with the approval of the state director of local finance. Under certain conditions, they may be extended to 10 years (T.C.A. §§ 9-21-701 *et seq.*).

Tax anticipation notes for up to 60 percent of a city's total appropriations for a current fiscal year are authorized subject to prior approval by the state director of local finance. These must be paid by the end of the fiscal year. If this is not possible, application for permission to issue funding bonds must be made to the state director "within 10 days prior to the close of the fiscal year" (T.C.A. § 9-21-801–803).

"Any note or promise to repay money issued ... contrary to the requirements of Chapter 21 ... shall not constitute a legal obligation of the local government and shall be subject to the restrictions and penalties of T.C.A. § 9-21-406." A lender holding such an invalid note may not collect interest on it until the act's requirements have been met and the obligation approved by the state director of local finance (T.C.A. § 9-21-406).

To assure that no Tennessee local government slips into the habit of borrowing funds to pay annual operating expenses, any city issuing notes is required to send a balanced annual budget to the state director of local finance. If the director finds that the city is using unrealistic projections in its budget, he or she may require the governing body to adjust its estimates or increase its tax levy (T.C.A. § 9-21-403).

Before notes may be issued to finance industrial parks, a city must obtain a certificate of public purpose and necessity from the Building Finance Committee in the Industrial Development Division of the Department of Economic and Community Development (T.C.A. § 9-21-402, T.C.A. § 13-16-207).

### ***Refunding Bonds***

Before issuing refunding bonds for either outstanding general obligation bonds or outstanding revenue bonds, the city's refunding plan must be submitted to the state director of local finance (T.C.A. §§ 9-21-901 *et seq.*, T.C.A. §§ 9-21-1001 *et seq.*).

### ***Utility Bond Law***

The Revenue Bond Law of 1935 was not repealed. It allows issuing bonds secured by revenues to acquire, construct, reconstruct, improve, or extend parking facilities, water, sewer, gas, or electric systems within or without a city's corporate limits. No referendum is required, only approval by "a majority of all members [of the governing body] then in office." The maximum term is 40 years, and there is no interest rate ceiling. Revenue

anticipation notes with terms of up to five years and refunding bonds also are authorized (T.C.A. § 7-34-101–118).

### **Cash Basis Law of 1937**

The Cash Basis Law of 1937 is another old bond law that has not been repealed. The law was enacted to help cities and counties cope with serious financial problems brought on by the Great Depression of the 1930s. It may be used to

- Fund notes, warrants, or other debts not secured by bonds;
- Refund any existing bonds and accrued interest thereon; and
- Pay bond redemption premiums and other expenses deemed necessary by the governing body.

The governing body is specifically empowered to take final action at one meeting (one reading only) “notwithstanding the provisions of any public or private statute.”

The bond order must include a pledge to levy property taxes sufficient to retire the bonds. It becomes effective on passage by the governing body. Publication of the bond order in a newspaper published in the city or county “once in each of two consecutive weeks” is required. Maximum terms are 20 years for funding bonds and 30 years for refunding bonds, but the state director of local finance may extend these terms by 10 years. Registered bonds are authorized as to principal only or as to principal and interest. No maximum interest rate is specified.

Prior approval of the state director of local finance is required for issuing bonds under this law; therefore, a detailed financial report must be prepared (T.C.A. § 9-11-108). As long as any bonds issued under this law are outstanding, complete annual budgets for all city or county operations must be submitted to the state director of local finance at least three weeks before adoption. Each annual budget must have the director’s approval before adoption. Bonds or notes issued under this statute are exempt from any other public or private law provisions (T.C.A. §§ 9-11-101 *et seq.*).

Some cities used this law as they wrestled with serious debt problems, and a general belief prevailed that it would bring lower interest rates because of the state director’s oversight and prior approval requirements. In the mid-1950s, at least 16 cities were subject to the law. As time passed, such bonds were retired. Cities continued using the law because of less financial pressure and the subordination of budget power to the state director of local finance. By 1987, no cities were under this law.

### **Registering Bonds**

Procedures and requirements for registering bonds and other public obligations following the federal requirement that all municipal securities must be registered after July 1, 1983, are contained in T.C.A. §§ 9-19-101 *et seq.* and T.C.A. § 9-21-111.

## Special Assessments

Cities frequently receive requests from neighborhoods for drainage projects, street improvements, or other public works construction that benefit only the requesting neighborhood. Instead of spending citywide funds for the project, the city may use a special assessment process in which the benefiting property owners pay part or all of the improvement costs. The state code provides two separate, yet similar, procedures for establishing special assessments, and some city charters include a local procedure.

### ***Establishing Special Assessments: Procedure Number One***

Any city, unless its private act charter provides otherwise, may use special assessments to pay for constructing or improving streets, alleys, or other public places. Assessments are calculated according to the frontage of the abutting lot or parcel to the street, alley, or other public place (front-foot basis). The improvement district is created by ordinance following a public hearing. Two-thirds of the project cost is paid by the neighborhood, and one-third is paid by the city. No property owner has to pay an assessment of more than 50 percent of the market value of his or her lot and the improvements.

If the owners of at least 75 percent of the front-footage in the benefiting neighborhood wish to relieve the city from bearing its burden to contribute toward the cost of the improvement, they may state in the petition their desire to pay 100 percent of the cost. However, in this event, the maximum assessment is still one-half of the assessed value of each lot.

T.C.A. § 7-32-101(b) allows municipalities to make special assessments for flood control and water management against owners of property in a benefited flood plain. The municipality must assess at least two-thirds of the cost not paid by federal funds to the benefited owners.

The assessment becomes a lien against the property. Property owners may pay the assessment over five years at six percent interest (T.C.A. §§ 7-32-101 *et seq.*). Cities may borrow money under the Local Government Public Obligations Act of 1986 to pay for the improvements (T.C.A. §§ 7-33-101 *et seq.*, T.C.A. § 7-33-201).

### ***Establishing Special Assessments: Procedure Number Two***

Under this alternative procedure, cities may authorize special assessments for streets, sidewalks, other public ways, including storm drains, sanitary sewers, and the undergrounding of overhead utility cables, including streetscape improvements.

Charges for the improvements are allocated to property owners based on assessed values of their benefited properties instead of on a front-foot basis. The full cost of the project may be charged to the property owners if the city pledges the full faith and credit of the municipality to satisfy any deficiency in collections. Otherwise, 75 percent of the cost may be charged (T.C.A. §§ 7-33-301 *et seq.*).

Churches and other tax-exempt properties are charged an assessment, but undeveloped areas may not be charged (T.C.A. § 7-33-310). The law, somewhat ambiguously, seems to require the governing body to act if the owners of 51 percent of the total assessed value of the property to be benefited petition for an improvement (T.C.A. § 7-33-303).

## Public Building Authority

Any city and/or county may establish a public building authority (PBA). The authority is a public, nonprofit corporation that can build and operate buildings used by one government, several governments, government organizations, and private businesses that lease space in such buildings. The authority's powers include any undertaking that can be financed by bonds, other municipal obligations, the state, or any agency that enters into an agreement with the authority (T.C.A. §§ 12-10-101 *et seq.*).

The authority may issue revenue bonds to raise money to construct a building. Revenue from long-term leases of the space may pay the bonds. If the bonds or notes are issued in registered form, they must meet requirements established by the Tennessee Public Obligations Registration Act (T.C.A. §§ 9-19-101 *et seq.*).

Any municipality may, by resolution, enter into leases, loan agreements, sales contracts, or operating agreements or contracts for financing certain projects. Such leases, loan agreements, sales contracts, or operating contracts with an authority are payable only from revenues from one or more city projects. After a city makes a commitment to lease space in an authority's building, it must make the necessary tax levies to meet the lease's payment terms, including the project's operating and maintenance expenses. Such a tax must be by resolution and is in addition to other taxes authorized by charter. Cities with taxing power that enter into any lease, loan agreement, or sales contract with a public building authority must comply with the same resolution, notice, and election provisions the municipality must comply with in issuing general obligation bonds unless the lease, loan agreement, or sales contract retires or refunds existing debt (T.C.A. §§ 12-10-101 *et seq.*).

T.C.A. § 12-10-124(c) requires PBAs to publicly advertise and receive competitive bids for the construction of buildings or improvements costing more than \$10,000 but less than \$1,000,000. For buildings or improvements costing \$1,000,000 or more, the authority must use public advertisement or competitive sealed bids, a request for proposals with minimum required qualifications, or a request for qualifications, including minimum qualification requirements, in which multiple proposers are selected and prequalified to submit bids.

Municipalities, counties and metropolitan governments may invest loan proceeds from public building authorities in guaranteed investment contracts chosen or established by the authority under restrictions set out in T.C.A. § 12-10-111.

## Wastewater Facility Grants and Loans

T.C.A. § Title 68, Chapter 221, contains three different parts dealing with grants and loans for wastewater facilities

- Part 2 authorizes loans called “repayable grants”;
- Part 8 authorizes wastewater treatment works construction grants; and
- Part 10 authorizes loans from a revolving loan fund. These loans are also available to intergovernmental entities created by cooperating local governments, such as water or wastewater authorities.

Although the state puts in some money, the vast majority of nonlocal funds for wastewater projects come from the federal government and have been allocated through the state. In the past, significant grant funds were available. With few exceptions, only loans are available now.

### ***Repayable Grants***

To provide these loans, a procedure for issuing state bonds is outlined in T.C.A. §§ 68-221-201 *et seq.* A city receiving a loan agrees to a repayment schedule in a contract with the state and establishes sewer user fees to produce revenues to pay the debt service.

This statute also includes authority to

- Require sewer connections wherever service is available;
- Refuse water service if such connections are not made;
- Impose connection charges; and
- Levy other charges necessary to raise funds for sewer system operations and maintenance.

Increases in the sewer user fee may not take place automatically when base water charges are increased. They must be separately adjudged reasonable and justified (T.C.A. § 68-221-201–212).

To assure that the state gets its money back, the loans may be given only to cities receiving state-shared revenue. The annual loan payment may not exceed twice the unobligated state-shared taxes the city receives (T.C.A. § 68-221-202).

### ***Construction Grants***

The Wastewater Treatment Works Construction Grant Act of 1984 provides grants to cities for constructing wastewater treatment works. Grants are allocated according to a statewide priority list maintained by the Department of Environment and Conservation.

Grants are for 55 percent of the eligible portion of the project. If innovative technology is used, grants are for 75 percent. The funds may be used for preliminary engineering and



as matching funds for federal EPA grants. Municipalities receiving grants must maintain user rates that will fund operation, maintenance, principal and interest obligations, as well as an adequate depreciation account (T.C.A. §§ 68-221-801 *et seq.*).

### ***Revolving Loan Fund***

The purpose of the Wastewater Facilities Act of 1987 is “to provide local governments in Tennessee with low-cost financial assistance relative to necessary wastewater facilities through the creation of a self-sustaining revolving loan program.”

The loan program is administered jointly by the Tennessee Department of Environment and Conservation and the Tennessee Local Development Authority. Cities in the “lower economic scale” may receive loans at lower interest rates than other jurisdictions. Cities receiving loans must agree to adjust their sewer fees periodically so that loan payments and operating costs may be “timely paid.” They also must certify their compliance with an operating plan for their facility that has been approved by the Tennessee Department of Environment and Conservation. The plan must address the quality, compensation, and number of wastewater facility employees during the life of the loan. These loans also are available to intergovernmental entities created by cooperating local governments, such as wastewater authorities (T.C.A. §§ 68-221-1001 *et seq.*).

### **Water Facility Loans**

State loans funded by state bonds may be made to cities for constructing waterworks under the Waterworks Construction Loan Act of 1974. The provisions of the act are almost identical to those of the repayable grants for sewer construction described above. Water facility loans are administered by the Department of Environment and Conservation, which is given authority to issue necessary rules and regulations and to enter into agreements with cities with respect to such loans (T.C.A. §§ 68-221-501 *et seq.*).

### ***Drinking Water State Revolving Fund***

T.C.A. §§ 68-211-1201 *et seq.* do the following

- Create a Drinking Water State Revolving Fund in the state treasury;
- Provide for loans from the fund to water systems;
- Establish that water systems serving areas in the lower economic scale are eligible for lower interest rates on loans;
- Give priority to projects that address the most severe health problems;
- Provide for affordability criteria for loans based primarily on an area’s per capita income and property values;
- Place certain restrictions on using revolving funds, including changes in the system’s method of operation;
- Require the water system obtaining the loan to establish dedicated revenue sources to repay the loan, periodically adjust fees and charges, and maintain financial records in accordance with governmental accounting standards;

- Provide that the loans may be interest free; and
- Under certain conditions, allow extended terms for loans to disadvantaged communities.

T.C.A. § 68-221-1007–1015 place water systems under the wastewater financing board’s jurisdiction. Loans under this program also are available to entities created by cooperating local governments, such as water authorities.

## Housing Authority

Local housing authorities are authorized to purchase mortgages and make mortgage loans to nonprofit entities or corporations. To fund these undertakings, housing authorities may sell bonds by public or private sale. A maximum interest rate is not fixed (T.C.A. § 13-20-104, 602). An industrial development corporation is empowered to provide multifamily housing facilities to be occupied by elderly, handicapped, or low- or moderate-income people (T.C.A. § 7-53-101(11)(A)(x)).

T.C.A. § 13-20-408 prescribes the appointment of a board of commissioners to govern the housing authority. Where the housing authority contains 300 or more units, at least one housing authority commissioner must be a resident of public housing. The resident must be appointed to the first vacancy on the board that occurs after May 24, 2000.

Housing authority security officers have the same powers as law enforcement officers if they meet the same qualifications and training required of full-time police officers. However, security officers may make arrests only when offenses are committed on housing authority property (T.C.A. § 13-20-419).

## Local Development Authority

The Tennessee Local Development Authority was created in 1978 as a central state agency to handle a variety of state loans to city governments and other public entities.

The governor chairs the authority. Its members include the secretary of state, state treasurer, comptroller, commissioner of finance and administration, an appointee by the speaker of the Senate chosen from three people nominated by the Tennessee County Services Association, and an appointee by the speaker of the House of Representatives from three persons nominated by the Tennessee Municipal League.

The authority may make loans to counties, cities, metropolitan governments, and special districts to finance construction of sewage treatment facilities, waterworks, correctional facilities, and resource and energy recovery facilities. Although prior legislation authorizing other means of financing some of these projects has not been repealed, the legislature declared that this program should be used preferentially. The loan agreements are made between the Department of Environment and Conservation

and the local governmental unit (T.C.A. §§ 4-31-101 *et seq.*).

### Economic Development

See Chapter 12, “Economic Development,” for a discussion of capital funding for industrial parks, downtown redevelopment, and other economic development projects.

### Unfunded Pension Obligations

Any local government may issue general obligation bonds for certain unfunded pension obligations if the state director of local finance recommends the issuance and the state funding board approves it. “Certain unfunded pension obligations” means pension benefits for local government employees whose jobs resulted from the local government taking over another local government’s responsibilities (T.C.A. § 9-21-127).

### Zone Academy Projects

Counties, municipalities, and special school districts are authorized to borrow funds from the Tennessee School Bond Authority for “qualified zone academy projects.” These projects are buildings, structures, improvements, or equipment for schools, and the county is not required to share the proceeds of the loan with the city school system (T.C.A. §§ 49-3-1201 *et seq.*).

### Restoration of Historic Theaters

T.C.A. § 67-4-409(j)(2)(A) allows funds in the state land acquisition fund to be used to restore historic theaters owned by municipalities and that are listed on the National Register of Historic Places.

# Fiscal Administration

## Fiscal Administration in General

Most municipal charters contain some provisions about fiscal administration. However, some general laws have been enacted in this area. If these laws are more restrictive or comprehensive, they take precedence over charter provisions. For example, the general law requiring annual audits supersedes a private act requiring only biennial audits.

## Budget, Appropriations, Publication Requirements

The Municipal Budget Law of 1982 applies to municipalities that do not have budget provisions in their charters requiring detailed estimates of proposed expenditures, expenditures for the preceding fiscal year, reasons for recommended departures, and estimates of anticipated revenue from all sources with comparative statements for the past, present, and next fiscal year.

Cities operating under general law charters and cities that do not have charter budget requirements, at least as detailed as the Municipal Budget Law of 1982 (T.C.A. §§ 6-56-201 *et seq.*), must publish their annual operating budget, comparisons of the proposed budget with the actual budget for the prior year, and estimated expenditures for the current year. This must include

- Revenues and expenditures for the general, public works, general purpose school, and debt service funds;
- Revenue sources for each fund broken down by local, state, federal, and other sources;
- Expenditures for each fund listed separately by salaries and other costs;
- Beginning and ending fund balances for each fund; and
- The number of full-time equivalent employee positions for each fund.

Publication must be in a newspaper of general circulation not fewer than 10 days before the meeting at which the governing body will consider final passage of the budget.

### ***Biennial Budgets***

A municipality may propose and adopt a biennial budget for any departments approved by the director of local finance (T.C.A. § 4-3-305).

### ***Appropriated Funds Required***

A general law provides that “no person shall be entitled to have made available to them or otherwise be entitled to any program or any services ... unless funds remain available for such program or service from monies appropriated for that purpose by ... the appropriate governing body of a political subdivision” (T.C.A. § 9-1-116). There are no exceptions to the rule that public funds in Tennessee may not be spent until a governing

body has appropriated them.

### ***Appropriations to Civic, Charitable, and Educational Organizations***

Cities may make appropriations to charitable organizations and nonprofit civic organizations (organizations operating under 501(c)(4) or 501(c)(6) of the Internal Revenue Code), such as chambers of commerce and industrial promotion agencies. The city must prescribe guidelines directing how agencies may use the money. The agencies must submit an annual report and audit to the city. Advance newspaper notice is required for an appropriation to a nonprofit civic organization. Also, the state comptroller is required to issue regulations governing such appropriations (T.C.A. § 6-54-111).

Municipalities are specifically authorized to donate public funds to public or tax-supported colleges and universities and even levy taxes for such donations (T.C.A. § 49-7-108).

T.C.A. § 12-8-103 authorizes counties and cities to work gratuitously for charitable, nonprofit organizations, including churches and schools. However, the validity of this statute is doubtful.

### ***Loans to Other Entities***

Cities may contract to make loans, grants, donations, and reimbursements to utility districts and other local governments for constructing public works projects (T.C.A. § 9-21-107).

### **Accounting System**

T.C.A. § 9-2-102 requires the department of audit "... to prescribe a uniform system of bookkeeping ... in all state, county, and municipal offices." The uniform system for municipalities is prescribed in the *Internal Control and Compliance Manual for Tennessee Municipalities* (Comptroller of the Treasury, Division of Municipal Audit, April 1995). The manual itself declares that it must be used in conjunction with Chapters 1 through 12 of the Government Finance Officers Association's 1994 *Governmental Accounting, Auditing, and Financial Reporting* publication, commonly known as the "Blue Book." Together, these publications supersede the *Uniform Accounting Manual for Tennessee Municipalities*. However, the comptroller also may approve any "existing system, with the concurrence of the commissioner of Finance and Administration."

### ***Electronic Business Systems***

The Uniform Electronic Transactions Act, T.C.A. §§ 47-10-101 *et seq.*, authorizes public officials, including those of municipalities and utility districts, to conduct business transactions by electronic means. Public officials may determine whether and to what extent they will send, accept, and rely on electronic records and electronic signatures.

Any municipal official who decides to implement an electronic business system that provides for sending and receiving electronic records that contain electronic signatures and/or authorizations must file a statement with the comptroller of the treasury at least 30 days before offering the service. The statement must contain

- A description of the computer hardware and software to be used;
- A description of policies and procedures related to implementation of the system;
- Documentation of the internal controls that will ensure the system's integrity;
- A description of the public official's personnel who will be responsible for implementation of the system;
- A description of the types of records and transactions to be electronically communicated, as well as a description of the transaction and record authorization process, including a description of any electronic signature to be used;
- Estimated cost of the system, including development and implementation costs; and
- The expected benefits and/or estimated cost savings, if any, of conducting business by electronic means.

Within 12 to 18 months after implementation of an electronic business system, a municipal official must provide a post implementation review to the comptroller of the treasury. This review must contain

- An assessment of the system by the official;
- Responses from a survey of users of the system; and
- Any recommendations for improvements to the system.

See Chapter 5 for open record implications of this statute.

### ***Receipt of Funds***

Municipalities are authorized to accept checks, money orders, credit cards and debit cards for taxes, licenses, fines, fees, and other money collected by the municipality (T.C.A. § 9-1-108(a) and (c)(1)). If payment is made by a bad check, the municipality may impose a penalty of \$20 or one percent of the amount of the check over \$2000 (T.C.A. § 9-1-109). If payment is made by a credit card or debit card, the municipality may collect a processing fee in an amount equal to the amount paid to the third party that processes the payment. This fee shall not exceed five percent of the amount of the payment. If payment is made by a credit card that is not honored by the credit card company, the municipality may collect a service charge equal to that charged for a check that is returned for insufficient funds. This charge shall not apply if an electronic device is used to conduct the credit card transaction and the card and cardholder are present when the municipal officer conducting the transaction learns that the credit card will not be honored. The municipal officer collecting funds through payment by a credit card or debit card shall state on any notice to the person owing the tax, fine, fee, etc., either the percentage of the processing fee, or the actual fee imposed for the use of a credit card or debit card (T.C.A. § 9-1-108(c)(2)-(6)).

### ***Investment (Deposit) of Municipal Funds***

Funds temporarily not needed may be invested in a wide range of securities, including

- U.S. treasury bills and notes;
- Nonconvertible securities of federal agencies such as the Federal National Mortgage Association;
- Secured certificates of deposit at state and federal chartered banks and savings and loan associations;
- Repurchase agreements of federal agency securities under procedures established by the state funding board if approved by the director of local finance;
- Money market funds made up of authorized securities if approved by the state director of local finance;
- Top-rated state and local government general obligation bonds—investment of proceeds of notes and bonds (T.C.A. § 6-56-106);
- TVA obligations (T.C.A. § 35-3-119);
- Public housing authority obligations (T.C.A. § 35-3-115);
- Industrial building bonds (T.C.A. § 7-55-114);
- Industrial development corporation bonds (T.C.A. § 7-53-309); and
- Water treatment authorities (T.C.A. § 68-221-611(h)).

Most investments are limited to a maximum of four-year maturities unless approved by the director of local finance (T.C.A. § 6-56-106).

Municipalities may also invest in cash management accounts to preserve FDIC protection (T.C.A. § 9-1-118).

### ***Investment Pool***

An investment pool, administered by the state treasurer, is available for investing a local government's idle public funds. Local funds are consolidated with state funds, but accurate and detailed accounting records are maintained for each local government. The cost of the service is deducted from that government's pro rata earnings (T.C.A. § 6-56-106 and 9-4-701–706).

### ***Collateral***

All cities may invest or deposit funds in state or federal savings and loan associations, providing certain collateral requirements are met for investments exceeding the \$100,000 insured by federal bank insurance programs (T.C.A. § 9-1-107). Funds in banks also must be collateralized (T.C.A. § 6-56-106), and the collateral must have a market value equal to 105 percent of the government funds it secures (T.C.A. § 9-4-105).

### ***Collateral Pool***

The Collateral Pool for Public Deposits Act of 1990 creates a system whereby any bank or savings institution designated as a qualified public depository guarantees public

depositors against loss caused by the default or insolvency of other qualified banks or public depositories in the same pool. The act created the collateral pool board, which is responsible for administering the system (T.C.A. §§ 9-4-501 *et seq.*).

The average monthly balance of public funds in a depository participating in the collateral pool may not exceed 110 percent of the average daily balance of public funds in the depository.

### **Audits**

Each municipality's governing body is responsible for obtaining annual audits of "all departments, boards, and agencies under its jurisdiction that receive and disburse funds ... [including] general funds, highway funds, school funds, and public utilities." The audit must be completed "as soon as practicable after the end of the fiscal year" (T.C.A. § 6-56-101).

Copies of the audit must be furnished to the mayor, the "chief executive officer," each member of the governing body, the comptroller, and "shall also be made available to the press" (T.C.A. § 6-56-105). A copy is required to be placed in the main branch of the municipality's public library and also may be posted on the Internet (T.C.A. § 6-56-104).

Such audits must meet minimum standards prescribed by the state comptroller and shall be approved by that office. The audits may be made by certified public accountants, public accountants, or auditors from the comptroller's office. If a city fails to have an audit, the comptroller may require one at the city's expense (T.C.A. § 6-56-105).

The department of audit in the comptroller's office may establish minimum standards for audits by the internal audit staffs of local governments. The department also may require all such audits to contain a statement of compliance with those standards (T.C.A. § 4-3-304(9)).

### **Comptroller Fees**

T.C.A. § 8-4-108 allows the comptroller to charge administrative fees for services requested by and provided to municipalities and other local governments.

### **Compliance with GASB 34**

Municipalities must comply with GASB 34 by June 30, 2008. Failure to do so will result in more oversight of the municipality's finances by the state comptroller and possible loss of economic development grants and some state-shared revenues (T.C.A. §§ 9-3-401, *et seq.*).



## Chapter Ten

# Purchasing

### Municipal Purchasing Law of 1983

The Municipal Purchasing Law of 1983 establishes minimum requirements for all cities that do not have charter or private act provisions governing competitive bidding and purchasing.

The act requires public advertising and competitive bids for all purchases, leases, and lease-purchases except

- Purchases through state contracts;
- Purchases from instrumentalities created by two or more cooperating governments;
- Goods and services purchased from nonprofit corporations formed to specifically serve municipalities;
- Purchases, leases, or lease-purchases of real property;
- Purchases, leases, or lease-purchases from other governments;
- When there is only one source of supply or proprietary product;
- Emergency purchases (complete documentation and a report to the municipality's governing body and chief executive are required for each emergency purchase);
- Leases or lease-purchase agreements requiring payments of less than \$2,500 during a fiscal year;
- Purchases of perishable commodities when approved by the governing body and subject to certain documentation and reporting requirements;
- Fuel and fuel products, which may be purchased on the open market;
- Purchases, leases, or lease purchases of secondhand articles or equipment, etc., from federal, state, or local government units or agencies;
- Any contract for purchasing natural or propane gas for resale; and
- Purchases under \$2,500, although cities may adopt an ordinance increasing the purchase amount to \$10,000 before advertising and competitive bids are required.

Purchases between \$1,000 and the amount established for advertising and competitive bids may be made without advertising on the open market but "wherever possible" must be based on three competitive bids. Purchases of less than \$1,000 do not require advertising or competitive bidding (T.C.A. §§ 6-56-301 *et seq.*).

### State Government and Local Purchasing

#### ***Purchasing through State General Services***

Municipalities may take advantage of state prices regardless of any charter or general law requirements pertaining to competitive bidding. Additionally, aside from any local or

private act or charter or general law restrictions, municipalities may buy any item from local sources if

- Local sources offer the item at the same or a lower price than the state contracts; or
- The item is not available to local governments under the provisions of contracts or price agreements entered into by the Tennessee Department of General Services. Not all prices quoted to the state are available to local governments (T.C.A. § 12-3-1001). The items, prices, and vendor information are online at the Department of General Service's Purchasing Division site at [www.state.tn.us/generalserv/purchasing/kont.htm](http://www.state.tn.us/generalserv/purchasing/kont.htm).

### ***Purchases from Other Governments***

Any municipality may buy secondhand items or equipment or other materials, supplies, commodities, and equipment from any other government. These purchases may be made without competitive bidding and public advertising, regardless of charter requirements (T.C.A. § 12-3-1003).

### ***Purchases for Other Local Governments***

A local governmental entity may buy supplies, equipment, and services for any other local governmental body at the latter's request. Examples of governmental entities include municipalities, counties and utility districts.

The acquisition must be made according to the purchasing entity's terms. The entity for which the purchase is made bears the acquisition cost.

The requesting entity meets all of its competitive bidding and public advertisement requirements if the purchasing body complies with its own buying requirements. When buying services (not supplies or equipment), it is a good idea for the purchasing entity to identify the requesting entity in the bid (T.C.A. § 12-3-1004).

### ***Property Purchases at Public Auctions; Reporting***

T.C.A. § 12-3-1006 authorizes cities to establish written procedures governing purchases at publicly advertised auctions and sets reporting requirements for the purchasing official.

### ***Regulations for Competitive Bidding***

T.C.A. § 12-3-1007 outlines regulations governing competitive bidding for municipalities with populations exceeding 150,000.

### ***Transferring Real or Personal Property Among Governments***

T.C.A. § 12-3-1005 authorizes counties, municipalities, and metropolitan governments, upon approval of their governing bodies, to purchase, trade, or receive as a gift any used or surplus personal property from another such government, the state of

Tennessee, the federal government, and any division of such governments, regardless of any laws regulating competitive bidding and public advertisement. By resolution or ordinance of its governing body, any county, municipality, or metropolitan government may establish a procedure for disposing of its surplus personal property by selling, giving, trading, or bartering. Recipients include counties, municipalities, metropolitan governments, the state of Tennessee, the federal government, other states or their political subdivisions, the divisions of any of the foregoing, or other governmental entities. Any other law concerning selling or disposing of used or surplus personal property may be disregarded.

T.C.A. § 12-3-1010 authorizes municipalities, counties, and metropolitan governments to transfer the ownership of assets for fire protection purchased with federal, state, or local grants to volunteer fire departments within any such government. The volunteer fire department must be registered as a nonprofit organization with the Tennessee Secretary of State. This act must be approved locally before it becomes effective.

T.C.A. § 49-6-2006 authorizes local boards of education to transfer surplus real or personal school property “to the county or to any municipality within the county for public use without competitive bidding or sale.”

Any municipality may contract with one or more public entities to transfer real or personal property when the public entity receiving the property uses it for a public purpose and the governing body of each authorizes the transfer. The entity transferring the property does not have to declare it surplus (T.C.A. § 12-9-110).

### ***Products from State Agencies***

The Tennessee prison system operates several workshops that manufacture products useable by city governments (e.g., office furniture and equipment, street signs, paint, envelopes, and letterhead stationery). A catalog of such products is available from Tennessee State Industries in Nashville.

A general law mandates cities and towns to purchase articles “produced or manufactured” in prison industries if the board of standards certifies that the articles’ quality is satisfactory, the prices are reasonable, the goods are available, and the materials meet the purchasing municipalities’ requirements (T.C.A. § 41-22-119–120)

A similar general law says that political subdivisions must purchase “... all services or commodities required ... from qualified nonprofit work centers for the blind or severely handicapped ... provided the articles are certified by the board of standards and are available” (T.C.A. § 71-4-703).

### ***Purchasing TRICOR Products***

T.C.A. § 41-22-116 allows the Tennessee Rehabilitative Initiative in Correction board to develop policies for the sale of TRICOR products to municipal employees.

### **Surplus State Property**

The State Surplus Personal Property Act of 1976 permits the sale or transfer of certain state surplus personal property to municipalities and other specific entities when the transaction is a

- Sale to political subdivisions of the state, governmental entities, and nonprofit corporations approved as authorized donees under the federal Surplus Property Program and sale to nonprofit, federally financed, rural electrical corporations;
- Sale for fair market value to nonprofit volunteer fire, police, and rescue organizations operated for a public purpose;
- Sale or transfer connected with transferring associated real property to a local government, and the sale or transfer is in the interest of the state;
- Sale or transfer without cost to local governments, provided the property was initially acquired from the federal government for civil defense purposes, and the sale or transfer is in the interest of the state; or
- Transfer, without cost, of surplus computer equipment to local educational agencies, provided that such property is suited for those purposes, and the transfer is in the interest of the state.

The sale or transfer of such property is subject to approval by the commissioner of General Services, other state officials, and the board of standards under various rules and regulations.

For all surplus property, governmental entities and other authorized donees must retain possession of the property for one year unless the board of standards authorizes earlier disposal (T.C.A. §§ 12-2-401 *et seq.*).

### **Professional Services**

#### ***Bids Prohibited for Professional Services***

Taking bids is prohibited “for legal services, fiscal agents or financial advisers or advisory services, educational consultants, and similar services by professional persons or groups of high ethical standards.” Contracts for such services “shall be awarded on the basis of recognized competence and integrity.” The statute specifically permits “interviewing eligible persons or groups to determine the capabilities of such persons or groups” (T.C.A. § 12-4-106).

#### ***Fiscal Agent Services Contracts***

When issuing bonds, many cities employ a financial adviser or fiscal agent for advice on the issue’s structure, timing, terms, etc. State law requires a written contract with the fiscal agent that covers services to be rendered, costs, and expenses. If the fiscal agent wishes to bid directly or indirectly on the debt issue, he or she must have the city’s written permission (T.C.A. § 12-4-106).

## Miscellaneous Purchasing Provisions

### ***Electronic Bidding and Contracting***

T.C.A. § 12-3-704 allows municipalities to satisfy any mailing requirement by electronically distributing invitations to bid, requests for proposal, and other solicitations. Cities also may receive bids, proposals and offers electronically. However, cities shall not require small businesses and minority-owned businesses to receive or respond to invitations to bid, requests for proposals, or other solicitations electronically.

The “Uniform Electronic Transactions Act,” T.C.A. §§ 47-10-101 *et seq.*, provides that for parties who agree to conduct business in electronic form, signatures and contracts may not be denied legal effect solely because they are in electronic form.

### ***Purchases of Certain Insurance***

Cities may purchase tort liability insurance without public bidding if the insurance is purchased through a plan authorized and approved by an organization of governmental entities representing cities and counties, including the Tennessee Municipal League Risk Management Pool (T.C.A. § 29-20-407).

### ***Cooperative Purchasing Agreements (State)***

T.C.A. § 12-3-216 authorizes the commissioner of general services to enter into cooperative purchasing agreements with local governments provided that each contract is established through the use of competitive, sealed bids.

### ***Cooperative Purchasing Agreements (Local)***

T.C.A. § 12-3-1009 authorizes any local government to participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more other local governments in accordance with an agreement entered into between the participants.

### ***Prohibited Vendors***

It is unlawful for people convicted of violating the Sherman Antitrust Act, mail fraud provisions, and other criminal laws to solicit state or local government contracts if they are engaged in the criminal activity after May 22, 1981 (T.C.A. § 12-4-601, T.C.A. § 12-4-605).

### ***“Buy America” Restrictions***

A municipality is prohibited from buying materials for highway or roadway construction, resurfacing, or maintenance from any foreign government or company that is wholly owned and controlled by a foreign government unless satisfactory American-made materials are not available in sufficient quantities or if using American materials would increase the overall project cost by 5 percent or more (T.C.A. § 54-5-135).

### ***Purchasing Motor Oil***

Specifications for purchasing motor oil by competitive bids must include re-refined or

recycled lubricating motor oil unless documentation is provided that the city's equipment requires specialized treatment. Invitations to bid must be sent to all businesses on the Department of General Services list of businesses that distribute such oil (T.C.A. § 12-3-531).

### ***Life-cycle Costing***

"Except where private act or state law prohibits," cities are required to incorporate in their procurement policies the energy-efficiency standards and life-cycle costing used by the state in its procurement policies unless a city desires to use higher standards (T.C.A. § 12-3-601–612).

### ***Long-term Contracts and Lease Purchases***

Agreements for up to 40 years may be made to lease-purchase real or tangible property having a useful life of one year or more for a governmental purpose. A contract for up to five years may be approved by resolution or ordinance. If the contract is for more than five years, a published notice of the meeting held to consider it is required seven days prior to the meeting. This section includes explicit authority to contract for the lease-purchase, construction, operation, and/or management of sewage treatment facilities (T.C.A. § 7-51-901–908).

### ***Contracts for Painting and Maintenance of Water Tanks***

Municipalities may make multi-year contracts for painting and other maintenance of water storage tanks based upon a request for proposals. Cost is not the sole criterion for evaluation using this purchasing method. Municipalities may also competitively bid these multi-year contracts (T.C.A. § 12-4-123).

### ***Contractors' Bonds***

Before letting a public works contract, a city is required to have contractors post a bond to the effect that they will pay for all labor and materials used by them or any "immediate or remote subcontractor under them" for 25 percent of any contract in excess of \$100,000. In lieu of such a bond, the following may be substituted: U.S. treasury bonds, notes or bills; general obligation bonds of Tennessee; certificates of deposit; a bank's letter of credit, or cash. In addition, certain other conditions are attached to the last three alternatives. Letters of credit and certificates or other evidences of deposit in state and federal institutions with their principal office in Tennessee or their principal office in another state but with at least one branch in Tennessee qualify. All letters of credit must be accompanied by an authorization of the contractor to deliver retained funds to the institution issuing the letter. The requirement for the bond must be included in the advertisement for the project. A municipality may not require any bond to be from any particular surety, agent, broker, or producer (T.C.A. § 12-4-201). In addition, prior to awarding a contract for the services of a construction manager, a city must require either a bid bond equal to 10 percent of the value of services proposed and the value of the work to be managed, or a performance bond equal to the combined value of

services and work to be managed (T.C.A. § 62-6-129).

### ***Drug-free Workplace Requirements***

T.C.A. § 50-9-113 requires private construction companies with five or more employees that contract with a city to submit an affidavit that they have a drug-free workplace to the extent required of local governments. Cities may not contract with a contractor who does not comply with this statute. Municipalities must include the following in any bid or procurement specifications for construction services

- A statement of whether or not the municipality has a workplace drug testing program;
- A statement that describes the program if it has one; and
- A statement that any bidder must have a testing program at least as stringent as the municipality's program (T.C.A. § 50-9-114).

### ***Contractors' Licenses, Bids***

Contractors and electrical, plumbing, and HVAC subcontractors who do jobs costing \$25,000 or more must be licensed by the state (T.C.A. § 62-6-102, T.C.A. § 62-6-111). Officials issuing a permit or work order to an unlicensed contractor are guilty of a Class A misdemeanor (T.C.A. § 62-6-120).

The name, license number, license expiration date, and classification of contractors applying to bid on jobs must appear on the bid envelope when the bid is more than \$25,000. If the bid is less than \$25,000, only the name of the contractor must appear on the outside of the envelope. Upon opening the envelope, if the bid exceeds \$25,000, the bid is automatically disqualified (T.C.A. § 62-6-119(b)). The name of a prime contractor who does electrical, plumbing, heating, ventilation, and air conditioning must appear on the outside of the envelope. Failure of a bidder to comply voids the bid, and it may not be opened. It is a Class A misdemeanor for any person to disregard the above requirements.

Municipalities may not impose additional licensing requirements on state-licensed contractors (T.C.A. § 62-6-111(i)(2)(c)).

T.C.A. § 62-6-137 allows municipalities to require a permit bond for contractors to ensure that the contractor complies with applicable laws and ordinances. Requiring the permit bond program requires a two-thirds vote of the governing body.

### ***Exemption from Gasoline Taxes***

Gasoline, diesel, and certain other fuels purchased for a local government's exclusive use are exempted from federal excise tax. The vendor, rather than the local government, seeks a refund of excise taxes from the IRS. The vendor must be a "registered ultimate vendor," and the local government must supply the vendor with an "exemption certificate" (26 U.S.C.A. §§ 6416 and 6427).

Municipalities are exempt from state taxes on gasoline and other motor vehicle fuel purchased in the following ways

- Delivered in 500-gallon quantities into city-owned or leased tanks within 72 hours. (Multiple fuel purchases of smaller quantities may be combined only during that period);
- Delivered by a wholesaler through a customer-controlled pump connected to a storage tank. The pump may not be located on a retail station island nor may any person associated with a retail station have any part in the sale or dispensing of fuel products from the pump. The pump shall have the ability to identify each customer separately, and only the customer matching the identity shall be allowed to purchase fuel; and
- From retail stations through a fleet credit card issued by the oil company to a government agency.

The fuel must be used exclusively for government purposes in equipment owned or leased by a government agency and operated only by government employees. To qualify for this exemption, a city must apply to the state commissioner of revenue for a two-year, numbered tax-exemption certificate (T.C.A. § 67-3-150).

Public advertising and competitive bidding are not required for any contract for purchasing natural or propane gas for resale and/or municipal use (T.C.A. § 7-51-910).



## Chapter Eleven

# Personnel

### Public Officials

#### ***Judicial Ouster***

Some Tennessee city charters include ouster provisions, but the only general law procedure for removing elected officials from office is judicial ouster. Cities are entitled to use their municipal charter ouster provisions, or they may proceed under state law.

The judicial ouster procedure applies to all officers, including people holding any municipal “office of trust or profit.” (Note that it must be an “office” filled by an “officer,” distinguished from an “employee” holding a “position” that does not have the attributes of an “office.”) The statute makes any officer subject to such removal “who shall knowingly or willfully misconduct himself in office, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state, or who shall in any public place be in a state of intoxication produced by strong drink voluntarily taken, or who shall engage in any form of illegal gambling, or who shall commit any act constituting a violation of any penal statute involving moral turpitude” (T.C.A. § 8-47-101).

T.C.A. § 8-47-122(b) allows the taxing of costs and attorney fees against the complainant in an ouster suit if the complaint subsequently is withdrawn or deemed meritless. Similarly, after a final judgment in an ouster suit, governments may order reimbursement of attorney fees to the officer targeted in a failed ouster attempt (T.C.A. § 8-47-121).

The local attorney general or city attorney has a legal “duty” to investigate a written allegation that an officer has been guilty of any of the mentioned offenses. If he or she finds that “there is reasonable cause for such complaint, he shall forthwith institute proceedings in the Circuit, Chancery, or Criminal Court of the proper county.” However, with respect to the city attorney, there may be an irreconcilable conflict between that duty and the city attorney’s duties to the city, the mayor, and the rules of professional responsibility governing attorneys. Also, an attorney general or city attorney may act on his or her own initiative without a formal complaint (T.C.A. § 8-47-101–102). The officer must be removed from office if found guilty (T.C.A. § 8-47-120).

### Employee Protection

#### ***Americans with Disabilities Act***

The Americans with Disabilities Act (ADA) (42 U.S.C. §§ 12101 *et seq.*) contains five titles, each of which generally prohibits a broad range of discriminatory activities by public and private entities against persons with handicaps. Title I applies to private employers with 15 or more employees. Title II applies to *all* state and local government

programs, services, facilities, and activities, including employment. Title III applies to public accommodations. Title IV applies to services provided by telecommunications companies. Title V provides for the adoption of accessibility standards and awarding of attorney fees; expressly applies the ADA to the states; provides that federal, state, and local laws stricter than the ADA are preserved; and provides that illegal drug use is not a disability under the ADA. Generally, all the ADA provisions that apply to an activity or function that has a counterpart in state and local governments apply to those governments through Title II.

The ADA imposes stringent requirements on state and local governments in two main areas, the first of which is **employment**. State and local governments must make “reasonable accommodation” for handicapped persons who are otherwise qualified for the job and who must be able to perform the essential functions of the job either before or after the accommodation.

The second area is **program accessibility**. State and local governments must make their programs accessible to handicapped persons. The meaning of accessibility in a particular case usually will depend on a number of factors, including the type of program, whether the program is offered in new or existing facilities, the ability of the program to be moved or modified to make it more accessible, etc.

The ADA is extremely complicated and vague in many places. In addition, Tennessee’s handicapped discrimination statute interplays with the ADA (T.C.A. § 8-50-103; Cecil v. Gibson, 820 S.W.2d 361 (Tenn. Ct. App. 1991); Thorpe v. Alber’s Inc., 992 F.Supp. 84 (E.D. Tenn. 1996)), as do the Family Medical Leave Act and the Workers’ Compensation Law. The body of litigation interpreting and applying the ADA is still in its infancy and has not yet addressed even fundamental questions, such as “What is a handicapped person within the meaning of the ADA?” For those reasons, questions involving a city’s responsibilities under the ADA, particularly in individual cases, should be approached only with the aid of sound legal and practical advice. Many publications on the ADA are available, but due to the rapid development of the law on that subject, only current ones should be consulted.

### ***Handicapped People***

T.C.A. § 8-50-103 declares: “There shall be no discrimination in the hiring, firing, and other terms and conditions of employment of the state of Tennessee or any political subdivision of the state against any applicant for employment based solely upon any physical, mental, or visual handicap of the applicant unless such handicap to some degree prevents the applicant from performing the duties required by the employment sought or impairs the performance of the work involved. Furthermore, no blind person shall be discriminated against in any such employment practices because such person uses a guide dog. A violation of this provision is a Class C misdemeanor.” The definition of “handicap” includes people with contagious diseases, presumably including acquired immune deficiency syndrome (AIDS).

### ***Workplace Violence***

Employers, including local governments, that have an employee who has suffered workplace violence may seek restraining orders and injunctions against further violence by the subject individual against the employee while the employee is in the workplace or performing work (T.C.A. §§ 20-14-101 *et seq.*).

### ***Whistle-blower Protection***

Cities are prohibited from discharging an employee solely for refusing to participate in or remain silent about illegal activities. An employee who prevails in a retaliatory discharge lawsuit against an employer may recover reasonable attorney fees and costs (T.C.A. § 50-1-304).

### ***Tennessee Anti-Slapp Act***

The Tennessee Anti-Slapp (Strategic Lawsuits Against Political Participation) Act of 1997 grants immunity to individuals who, in good faith, report wrongdoing involving a public or government issue to the appropriate local, state, or federal government entity. The act's purpose is to protect concerned individuals and the information they provide, which is vital to effective law enforcement and efficient government operation.

This act allows the appropriate government agency to intervene in a lawsuit brought against a person because he or she communicated the information. Immunity does not apply if the person knew the information was false, if the informant recklessly disregarded the information's falsity, or if the information pertained to a person or entity other than a public figure. The winner in a case based on the immunity defense is entitled to recover costs and reasonable attorney fees (T.C.A. §§ 4-21-1001 *et seq.*).

### ***Employee's Right to Contact Elected Officials***

Disciplining or discriminating against a public employee for communicating with an elected public official is prohibited, with triple damages permitted for violations. However, an employer may correct or reprimand an employee "for making untrue allegations concerning any job-related matter" (T.C.A. § 8-50-601–604).

### ***Civil Service Boards***

Most local government civil service provisions are in individual charters or municipal codes. No general laws require Tennessee cities to have civil service systems, and only a few general laws apply to existing systems.

Civil service board members are prohibited from engaging in business with the city or with its employees. Members must be residents of the city for one year before appointment (T.C.A. § 6-54-114).

### ***Expense Reimbursements, Travel, and Vehicle Use Policies***

Municipalities are authorized to reimburse expenses related to the office of the mayor; members of the governing body, boards, commissions, or committees; and to any

official or employee whose salary is set by charter or general law. To reimburse such expenses, a city must

- Pass an ordinance authorizing a written expense reimbursement policy, which must be filed with the comptroller's office unless the city adopts MTAS's model policy. If the city adopts the MTAS model policy, it must notify the comptroller in writing that the policy was adopted and the date it was adopted;
- Require the chief administrative officer or his or her designee to prescribe expense forms, examine expense reports, and determine reimbursability; and
- Adopt a written vehicle use policy separate from the travel and expense policy.

Cities may pay travel expenses directly to the provider rather than to the official or employee. Municipalities with a population of greater than 100,000 are exempt from these provisions (T.C.A. §§ 6-54-901 *et seq.*).

If officials or employees are overcompensated for an expenditure, the overage is considered salary. Such a payment could exceed salary limitations set in the charter, and this could violate T.C.A. § 39-16-402(a)(5). Receiving any benefit not otherwise authorized by law is a Class E felony.

## Health Insurance

### **Group Health Insurance**

Municipalities have supplementary authority to establish group insurance plans (life, hospitalization, disability, or medical) for officials and employees after the governing body

- Appoints a committee to recommend a contract with an insurance company authorized to do business in Tennessee;
- Approves the contract by a majority vote (the council may later modify the contract); and
- Provides an election so employees and officials may accept or reject such coverage.

The city may pay all the costs or may pay a portion of the costs and deduct the remainder from employees' paychecks. Such a plan may be discontinued with at least a three-month notice to the participants (T.C.A. § 8-27-601–607).

State standards for a group health plan require coverage for

- Mammography screenings if the benefits include mastectomies (T.C.A. § 56-7-2502);
- Reconstructive surgery if mastectomies are provided (T.C.A. § 56-7-2507);
- Speech and hearing benefits (T.C.A. § 56-7-2603);
- Prostate cancer screenings ordered by a physician (T.C.A. § 56-7-2354); and

- Mental health treatment to the same extent as medical or surgical benefits (T.C.A. § 56-7-2360).

### ***State Group Health Insurance***

Cities may join the state's group health insurance program, which provides group health benefits for local government employees. This law provides for continued health coverage for the dependents of an employee killed while on active military duty (T.C.A. § 8-27-207). A similar program is provided for school system employees (T.C.A. §§ 8-27-301 *et seq.*).

### ***COBRA***

"COBRA" stands for Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. §§ 1161–1168 and 42 U.S.C. §§ 300bb-1–300bb-8). Upon occurrence of a qualifying event, this federal law requires municipalities with 20 or more employees to continue health coverage, at the employee's expense, for a certain period at the group rate. A qualifying event includes, but is not limited to

- Termination of employment (except for gross misconduct);
- Death of the covered employee;
- Reduction in work hours; and
- Divorce.

Once the qualifying event occurs, the employee or qualified beneficiaries must be given at least a 60-day notice to elect continuation of health care coverage. The period for which coverage can be continued varies, depending on the qualifying event. The notice must advise the ex-employee of assistance available from the state Department of Social Services (T.C.A. § 4-3-1404).

### ***Health Insurance Act of 1996***

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides, among other things, improved portability and continuity of health insurance coverage.

The act is designed to protect workers from losing their health insurance coverage in cases where they lose their jobs, change jobs, or become self-employed. It does so by placing new restrictions on preexisting condition exclusions, coverage termination, and limitations based on health status.

The act is applicable to group health plans, including government and church plans, that cover two or more employees. HIPAA coverage applies to any health insurance coverage offered in connection with a group health plan, including limited-scope dental and vision benefits, long-term care benefits, medical supplement plans, and specific disease or illness policies.

In general, group health plans are sponsored by employers, employee organizations, or both. HIPAA improves the availability and portability of health coverage by

- Limiting exclusions for preexisting medical conditions;

- Providing credit for prior health coverage and notifying new group health plans of previous coverage;
- Providing new enrollment rights to individuals who lose other health coverage or have a new dependent;
- Prohibiting discrimination in enrollment and premiums based on health status;
- Guaranteeing renewability of health insurance coverage; and
- Preserving the state's traditional role in regulating health insurance.

### ***Opt-out Option***

The act also establishes a provision allowing state and local governments with fully or partially self-funded programs to “opt out” of the requirement. However, there still are rules a city must follow if it opts out. The act also modifies COBRA rules affecting individuals with disabilities, newborns, and newly adopted children, permitting them an additional 11 months of coverage. (Individuals must pay 150 percent of the premium during the extension.) Excluded from the definition of group health insurance are

- Coverage only for accidents, including accidental death and dismemberment;
- Disability income insurance;
- Liability insurance, including general liability and automobile liability insurance;
- Coverage issued as a supplement to liability insurance;
- Workers' compensation or similar insurance;
- Automobile medical payment insurance;
- Credit-only insurance (*i.e.*, mortgage insurance); and
- Coverage for on-site medical clinics.

### ***Exemption***

Cities with fully or partially self-funded programs may elect to be exempt from certain requirements of the law. The exemption remains in effect for a single plan year. Cities may elect to be exempt from the following requirements

- Limitations or pre-existing condition exclusion periods;
- Special enrollment periods for individuals (and dependents) losing other coverage;
- Prohibitions on discriminating against individual participants and beneficiaries based on health status;
- Standards relating to benefits for mothers and newborns; and
- Parity in the application of certain limits to mental health benefits.

A city that makes the exemption election must notify the participants individually of the election and explain its consequences. This notice must be provided to each participant at the time of enrollment under the plan and to all participants annually.

The notice must include at least the following information

- A statement that, in general, federal law imposes requirements on group health plans concerning pre-existing conditions, special enrollment periods, discrimination, benefits for mothers and newborns, and parity for

- mental health benefits (which must be individually described in the notice);
- A statement that federal law gives the plan sponsor the right to exempt the plan in whole or in part, and that the plan sponsor has elected to do so;
- A statement identifying which parts of the plan are subject to the election and each of the requirements from which the plan sponsor has elected to be exempt; and
- If the plan chooses to provide any of the protections voluntarily, or is required under state law to do so, a statement identifying which protections apply.

The requirements of this exemption are considered to have been met if the notice is prominently printed in the summary plan or equivalent document and each participant receives a copy of that document at the time of enrollment and annually thereafter.

Notwithstanding an election under this section, a city's plan must provide for certification and disclosure of creditable coverage to participants and their dependents. Failure to comply with this requirement invalidates an election made under this section.

The election of exemption must be in writing. It must include an attached copy of the notice to participants of the exemption election. It must state the name of the plan and the name and address of the plan administrator. It must either state that the plan does not include premium-funded health insurance coverage, or it must identify which portion of the plan is not funded through insurance. Additionally, the election must be made in conformance with all of the plan sponsor's rules, including any required public hearings. Also, the election document must certify that the person signing it, including, if applicable, a third-party plan administrator, is legally authorized by the plan sponsor to do so. Finally, the election document must be signed by the person legally authorized by the plan sponsor to do so.

Since most city plans are not subject to collective bargaining agreements, the election must be sent to the Health Care Financing Administration (HCFA) by the day preceding the beginning date of the plan year. HCFA may extend the deadline for good cause.

If the city fails to file a timely exemption election, the plan is subject to the requirements of the act for the entire plan year. If filed appropriately, the exemption may be extended through subsequent elections.

Upon a finding by the HCFA that a city's plan has failed to comply with the requirements of the act and the city has failed to correct the noncompliance within 30 days, HCFA will notify the city that its election has been invalidated and that it is subject to the requirements of the entire act. A plan that fails to comply with the requirements is subject to federal enforcement by HCFA, including appropriate civil money penalties. The maximum penalty may not exceed \$100 for each day for each responsible entity for each individual to whom such a failure occurs. (See MTAS Hot Topic *Health Insurance Portability and Accountability Act of 1996*, Richard Stokes, 1999.)

## Other Employee Benefits

### ***Deferred Compensation***

Cities may set up deferred compensation programs so that officials and employees can meet IRS requirements to defer federal income taxes (T.C.A. § 8-25-101–108). A profit sharing or salary reduction plan to meet requirements of Section 401(k) of the Internal Revenue Code also may be established by ordinance or resolution (T.C.A. § 8-25-301–304).

### ***Cafeteria Benefit Plan***

As permitted by Section 125 of the federal Internal Revenue Code, political subdivisions of the state may make cafeteria benefit plans available to their employees. Day-care services may be provided under the plan, and the plan may be administered internally or by contract (T.C.A. § 8-25-501).

## Family and Medical Leave

### ***Federal Family and Medical Leave Act***

The federal Family and Medical Leave Act (FMLA) (29 U.S.C. §§ 2601 *et seq.*) generally covers private employers with 50 or more employees and “all” public agencies, regardless of the number of employees.

29 C.F.R. § 825.108(c)(1) says that “A state or a political subdivision of the state constitutes a single public agency, and, therefore, a state is a single employer, a county is a single employer, and a city or a town is a single employer.” However, application of the FMLA to local governments, regardless of their number of employees, apparently has a limited meaning. 29 C.F.R. § 825.108(d) says, “All public agencies are covered by FMLA regardless of the number of employees; they are not subject to the coverage threshold of 50 employees carried on the payroll each day for 20 or more weeks in a year. However, employees of public agencies must meet all the requirements of eligibility, including the requirement that the employer (e.g., state) employ 50 employees at the worksite or within 75 miles.”

In addition, “29 C.F.R. 825.110 says (a)n ‘eligible employee’ is the employee of a covered employer who

- Has been employed by the employer for at least twelve months, and
- Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and
- Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of the worksite.”

Eligible public employees are entitled to 12 weeks of unpaid leave for childbirth, placing a child for adoption or foster care, a serious health condition that makes the employee unable to perform job duties, and a serious health condition of a spouse, son, daughter, or parent.



The U.S. Sixth Circuit Court of Appeals held in *Rollins v. Wilson County Government*, 154 F.3d 626 (1998), that an employee of Wilson County, Tennessee, for eight months and an employee of the Wilson County School Board for four months could not aggregate the two terms of employment for the purpose of meeting the 12-month employment requirement for eligibility for FMLA leave because the two entities were separate public agencies.

Rules governing the conditions under which leave must be granted, the length of leave under certain conditions, and the rights of the city and the employee when the latter returns to work are complicated and frequently involve questions that have implications for both parties under Tennessee's Maternity Leave Act (T.C.A. § 4-21-408), the Americans with Disabilities Act, and the Workers' Compensation Law. A number of publications analyze the law under the FMLA, but only the most current ones should be consulted.

### ***State Parental Leave Act***

Cities with more than 100 full-time employees are required to grant up to four months of parental leave for childbirth or adoption to employees who have been employed full time for at least 12 consecutive months. At the city's discretion, parental leave may be with or without pay, but the leave cannot affect the employee's right to receive vacation time, sick leave, seniority, length-of-service credits, and other benefits. Except in the event of a medical emergency or adoption, the employee is required to give a three-month advance notice of his/her intent to take parental leave (T.C.A. § 4-21-408).

## Retirement

### ***Multiple Memberships Prohibited***

"(N)o public official or employee shall have multiple memberships in any retirement program(s) ... financed from public funds, whereby such official or employee obtains or accrues pensions or retirement benefits based upon the same period of service to the state ... or any of its political subdivisions." This section does not exclude participation in defined contribution plans established under Sections 401(k)c and 457 of the Internal Revenue Code as amended, subject to certain limitations. All 401(k), 403(b), and 457 plans established by public employers participating in TCRS in which employer contributions are made must be approved by the director of the state retirement system (T.C.A. § 8-35-111).

### ***Mandatory Retirement for Police Officers and Firefighters***

Municipalities may establish by resolution a mandatory retirement age for police officers and firefighters except for the police chief and fire chief. The mandatory retirement age may not violate the federal Age Discrimination in Employment Act. The age must be uniform for all affected employees and be not less than 60 years old.

The mandate is effective on the first day of the month after an employee reaches the

required age, and allows a supplemental bridge benefit (See T.C.A. § 8-36-211) if the retirement age is too young for employees to receive Social Security benefits(T.C.A. § 8-36-205).

The bridge benefit is 0.75 percent of an employee's average compensation multiplied by the years of service. This benefit does not apply to police or fire department supervisors or administrators who spend less than 50 percent of their time performing the daily duties of police officers or firefighters. These persons may work until they reach the age requirement for receiving Social Security benefits if they file a waiver with the retirement division for retirement and bridge benefits before the first day of the month the member attains the age established by the city (T.C.A. § 8-36-205).

### ***State Retirement System, Membership***

Any Tennessee municipality may elect to cover its employees under the Tennessee Consolidated Retirement System (TCRS). The option to participate is exercised by a resolution of the governing body. The state division of retirement will furnish a draft resolution. The resolution may exclude certain employment positions, which can be included later. A city council may also elect to make its members participants in TCRS (T.C.A. § 8-35-226). After a political subdivision elects to participate in the state retirement system, and such election is approved by the board of trustees, all eligible current employees may participate as provided in Chapters 34-37 of Title 8 of T.C.A. § However, membership in TCRS is mandatory for all eligible employees entering service of the employer after the date of approval is given (T.C.A. § 8-35-201–232).

A municipality, utility, or other instrumentality that operates under its own governing board may withdraw from the system by a two-thirds vote of its governing body and by giving a one-year written notice. A number of specific conditions are prescribed for such an action (T.C.A. § 8-35-218).

T.C.A. § 8-34-605(b)(2) has been amended to increase the period for retirement credit for military service in Vietnam from August 5, 1964, to May 7, 1975. The new period is February 28, 1961, to May 7, 1975.

### ***Increases in Benefits and Earnable Compensation***

Yearly increases in earnable compensation will be continued indefinitely for noncontributory employees. The local governing body must authorize and accept by resolution the liability for such increases (T.C.A. § 8-34-101(4)(B)).

Increases in retirement benefits are based on increases in the U.S. Consumer Price Index when the index is at least 0.5 percent. These increases are optional for local governments (T.C.A. § 8-36-701).

### ***Employment of Retirees***

A retired TCRS member may be reemployed on a temporary basis by a TCRS employer without loss of benefits. The retiree may not work more than 120 days during a calendar

year or receive more than 60 percent of the salary the retiree received in the year immediately preceding retirement. This amount may be adjusted each year. Working more than the time allowed or receiving more than the amount allowed will result in a reduction of retirement benefits (T.C.A. § 8-36-805).

### ***Police and Fire Minimum Retirement Allowances***

A municipality with its own retirement system may elect to be covered by a state act that prescribes minimum retirement pay for police officers and firefighters with 25 or more years of service. Under the act, pensions are two percent of the highest salary multiplied by the years of service up to 30 years. Pensions may not be less than 50 percent or more than 60 percent of the employee's highest monthly salary plus annual increases not exceeding three percent based on the Consumer Price Index. Any such adoption "shall be permanent and such action may not be repealed." This law may not be used if the city is under the Tennessee state retirement system or has a system "in which members' or beneficiaries' benefits are computed in conjunction with or reduced by Social Security benefits" (T.C.A. § 6-54-801–803).

### ***Reports on City Retirement System***

If a city is liable for a local retirement plan, it must file an annual report on or before November 1 with the secretary of the Council on Pensions and Insurance. The report must include

- Year-end financial statements for the most recent plan year ending on or before the preceding June 30;
- The system's most recent actuarial valuation made by a professionally qualified actuary; and
- Publications by the plan's administrator to the members and/or other interested parties.
- The report is to be filed on forms prescribed by the council (T.C.A. § 3-9-201–204).

### ***Social Security***

Any city may submit to the state Old Age and Survivors Insurance Agency a plan for participating in the federal Social Security program. For many municipalities, participation is mandatory. To find out which cities must participate, contact the state Department of Employment Security. When approved, the plan is administered under the federal law and an agreement between the federal and state governments. Every political subdivision in the Tennessee Consolidated Retirement System must participate. No such plan may be terminated, either in its entirety or as to any coverage group, after the effective date of the Social Security Amendments of 1983. A 1985 amendment made it optional for political subdivisions to share the cost of state administration of this program (T.C.A. §§ 8-38-101 *et seq.*).

## **Workers' Compensation**

City governments are among the few employers that do not automatically have to provide workers' compensation to employees. Cities may voluntarily agree to come under the state's Workers' Compensation Law. Coverage becomes effective 30 days after a city files a written notice with the commissioner of Labor. A city may choose to provide workers' compensation coverage only to certain departments (T.C.A. §§ 50-6-101 *et seq.*). Effective July 1, 2000, employers with more than 250 employees must file employee information on magnetic media (T.C.A. § 50-7-404 (c) (3)-(4)).

If a city elects to provide workers' compensation and a claim is filed, the employer is required to submit a wage statement to the court within 60 days of answering the complaint. The statement must detail the employee's wages for the previous 52 weeks unless the employer stipulates that the maximum rate applies (T.C.A. § 50-6-225(c)).

Actions for recovery are limited to one year from the date of the accident unless the employer makes voluntary payments within that period. In that event, an action for unpaid compensation may be filed one year from the last medical treatment resulting from the accident or from the date of the last voluntary payment, whichever is later (T.C.A. § 50-6-203).

Coverage may be canceled at any time by giving written notice. Designated city departments or divisions may be covered or canceled on a selective basis (T.C.A. § 50-6-106(5)).

The Tennessee Municipal League Risk Management Pool operates a workers' compensation insurance pool for member cities.

### ***Unemployment Compensation: Penalties for Failure to Pay***

T.C.A. §§ 50-7-101 *et seq.* prescribe the state's unemployment compensation program. Information concerning the application of this program to Tennessee municipalities can be obtained from local offices of the state Department of Employment Security. The statute contains a number of remedies available to the state for collection of unpaid premiums (T.C.A. §§ 50-7-401 *et seq.*).

## Health and Safety

### ***Tennessee Occupational Safety and Health Program***

Under the Tennessee Occupational Safety and Health Act (T.C.A. § 50-3-405(a)), all cities must comply with occupational safety and health standards or regulations promulgated by this act (T.C.A. § 50-3-910). The law requires employers, including local governments, to "... furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or harm ..." and to comply with certain other requirements (T.C.A. § 50-3-105). Cities may elect to be treated as private employers or to establish their own safety and health training programs consistent with state regulations.

Municipalities have until July 1, 2006, to make this decision. Municipalities created after July 1, 2004, have two years after their creation to make the election (T.C.A. § 50-3-910(b)).

A program must inform employees of state regulations applicable to their work environments and instruct them to recognize and avoid unsafe conditions. If a city establishes its own program, civil penalties will not be imposed against the local government for violations. The state Department of Labor merely inspects for compliance and reports noncompliance to the governor and the General Assembly (T.C.A. § 50-3-911). Special federal requirements have recently been enacted regarding employees, such as sewer operators and paramedics, who work in “permit-required confined spaces.” Cities must assure that emergency medical technicians (EMTs), public works employees, water and wastewater workers, and others at “high risk” are protected from toxic, explosive, or asphyxiating atmospheres and possible engulfment from small particles such as liquids, grain, or sawdust (29 C.F.R. § 1910.146).

Cities also must adopt and administer an infection control program to eliminate, or at least minimize, worker exposure to bloodborne pathogens, such as the hepatitis B virus and the human immunodeficiency virus (HIV) (29 C.F.R. § 1910.1030). To meet these federal requirements, cities must

- Establish and adopt a written exposure control plan;
- Adopt a universal precautions policy (a strategy that assumes every direct contact with body fluids is infectious);
- Provide protective equipment where there are exposure hazards;
- Ensure that the workplace is clean and sanitary;
- Properly dispose of contaminated waste;
- Provide training for “high-risk” employees;
- Provide hepatitis B vaccinations and post-exposure evaluations/follow-up; and
- Establish and maintain accurate records.

## Special Personnel Provisions for Police and Fire Employees

### ***Police Pay Supplements and Firefighter Educational Incentives***

Subject to annual appropriations, the state provides yearly pay supplements to police officers and educational incentives to firefighters who meet specified training and/or certification requirements. The fire incentive is administered by the Commission on Firefighting Personnel Standards and Education and is funded by a portion of the state premium tax on fire insurance (T.C.A. § 56-4-205). The police supplement is contingent on police officers completing 40 hours of in-service training each year (T.C.A. § 38-8-111).

### ***Police and Fire Employee Death from Lung or Heart Disease***

If the city has a compensation plan for line-of-duty injuries or deaths, these provisions apply to law enforcement officials in a “regular law enforcement department” or

firefighters in a “regular fire department.” The act establishes a presumption that “hypertension or heart disease” of police employees and “disease of the lungs, hypertension, or heart disease” of fire employees were “suffered in the course of employment.” This presumption does not apply, however, to workers’ compensation benefits for firefighters. The officer is eligible for on-the-job injury benefits unless the presumption can be overcome by “competent medical evidence.” The presumption does not apply unless a pre-employment physical showed no evidence of such disabilities (T.C.A. § 7-51-201).

Fire employee benefits for hypertension and heart disease apply to emergency medical service employees in counties with more than 400,000 people, but another statement of legislative intent says the section “... permit(s) and require(s) any such municipal corporation or political subdivision of the state ... to be covered by its provisions” (T.C.A. § 7-51-201(c)(2)).

### ***Volunteer Firefighters or Rescue Workers Killed in Line of Duty***

T.C.A. § 7-51-206 grants \$25,000 to the estate of any volunteer firefighter killed in the line of duty. T.C.A. § 7-51-207 does the same for the estate of a volunteer rescue worker killed in the line of duty.

### ***Police Bill of Rights***

The Police Bill of Rights (T.C.A. § 38-8-301) gives police officers certain minimum rights in these areas

- Investigations that are likely to lead to personnel actions against the police officer;
- Compelled or requested disclosure of the police officer’s income and other financial information;
- The right of the police officer to receive notice of charges against him or her and a right to respond to those charges, including the right to counsel at the police officer’s own expense; and
- The right of the police officer to a post-personnel action hearing and the rules governing that hearing. The police officer still may be suspended without pay under certain circumstances.

The Police Bill of Rights applies only to municipalities that provide a property interest in employment for police officers but do not have established procedures governing an officer’s dismissal, demotion, suspension, or transfer for punitive reasons (T.C.A. §§ 38-8-301 *et seq.*).

### ***Political Activity by Police Officers***

T.C.A. § 38-8-351 provides that no law enforcement officer shall engage in political activity or support or oppose any candidate, party, or measure in any election when on duty or when acting in an official capacity. However, when off duty and acting as a private citizen, no officer shall be prohibited from engaging in political activity or compelled to engage in political activity. This provision is contained in the same statute

as the Police Bill of Rights but probably applies to all police officers rather than only those police officers in municipalities where police officers have a property right in their employment. For a general authorization for municipal employees to engage in political activity, see T.C.A. § 7-51-1501. See also “Political Activities by Municipal Employees” later in this chapter.

### ***Firefighters’ Dues***

Cities are required to provide payroll deductions for firefighter association membership dues upon request of their full-time employees if 40 percent of the employees are association members (T.C.A. § 7-51-204).

### ***Jury Duty for Police and Fire Employees***

All members of fire companies and full-time law enforcement officers have a limited exemption from jury duty. Upon receipt of a summons to serve, such employees must notify the court clerk of a seven-day period within the next 12 months when they are available to serve. They will be required to serve on only one jury during the seven days (T.C.A. § 22-1-103(c)).

### ***Employment Rights of Volunteer Firefighters***

T.C.A. § 50-1-307 grants certain employment rights to volunteer firefighters. Among other things, it prohibits terminating a firefighter solely because he or she is absent from work because of an emergency. It also creates a civil cause of action for the firefighter terminated in violation of the provisions of this law. The provisions of this section do not expressly apply to a municipality as an employer of a volunteer firefighter.

## **Miscellaneous Personnel Provisions**

### ***Personnel Policy Requirements***

All municipalities incorporated before June 13, 1997, that did not already have a personnel policy were required by July 1, 1998, to adopt such a policy by ordinance, resolution, or otherwise. Municipalities incorporated after June 13, 1997, have two years after incorporation to adopt and implement a personnel policy.

A city may use the model personnel policy developed by MTAS or draft its own. The personnel policy must apply “fairly, impartially, and uniformly to the extent practicable to each department of the municipal government.” Among other things, the policy should outline

- Hiring procedures;
- Benefits and personnel rules and regulations;
- Fair and reasonable complaint conference and hearing procedures for dismissed, demoted, or suspended employees;
- Procedures for compliance with relevant federal laws, such as the Fair Labor Standards Act and the Americans with Disabilities Act;
- Drug and alcohol testing procedures; and

- Sexual harassment regulations.

The law mandates that the policy may not grant a property right or contract right to the job to any employee.

A copy of the resolution or ordinance (or the caption) adopting the policy must be published in a newspaper of general circulation in the municipality prior to its adoption. Also, a copy of the personnel policy must be kept in the city recorder's office and made available to employees upon request (T.C.A. § 6-54-123).

### ***Drug Testing***

Many municipalities have adopted regulations that provide for drug and/or alcohol testing of their employees. The testing of some municipal employees is required under the Omnibus Transportation Employee Testing Act of 1991. Cities must conduct pre-employment, reasonable suspicion, random, return-to-duty, and follow-up drug and alcohol testing on city employees who are required to obtain a commercial driver's license and who drive

- Vehicles with a gross weight of more than 26,000 pounds;
- Trailers with a gross weight of more than 10,000 pounds;
- Vehicles designed to transport more than 15 passengers, including the driver;
- or
- Any vehicle with placards that hauls hazardous materials.
- The definition of "driver" includes regular and part-time employees, occasional drivers, leased drivers, and independent contractors. Emergency vehicle drivers are exempt.

Similar testing requirements apply to certain gas utility employees (49 U.S.C.A. § 31306; 49 C.F.R. Part 40, 199, 382; T.C.A. §§ 55-50-401 *et seq.*).

In 1996, Tennessee adopted the Drug-Free Workplace Programs Act (DFWPA). This authorizes, but does not require, employers in Tennessee to adopt drug and alcohol testing programs that conform to the DFWPA and to rules adopted by the Tennessee Department of Labor in accordance with that act (T.C.A. §§ 50-9-101 *et seq.*; Rules of the Department of Labor, Division of Workers' Compensation, Chapter 0800-2-12, Drug-Free Workplace Programs). Employers who adopt such programs are eligible for reduced workers' compensation premiums. In addition, where an employee is injured in the course of his or her employment and tests positive for certain drugs at a prescribed level, a rebuttable presumption is created that the injury was occasioned primarily by the presence of the drug or drugs. Such a worker may be disciplined up to and including termination and forfeits his or her eligibility for workers' compensation medical and indemnity benefits.

In addition to requiring, and in some instances permitting, certain drug tests of employees under prescribed circumstances, the DFWPA requires employers to perform pre-employment drug testing of all job applicants. But it expressly provides that "for



public employees, such testing shall be limited to the extent permitted by the Tennessee and federal constitutions” (T.C.A. § 50-9-104(a)).

Both the DFWPA and the Department of Labor Rules provide in detail

- The purpose, scope, and policies reflected in the DFWPA and the tests implemented under the Drug-Free Workplace Program;
- Definitions that apply to the interpretation and application of the DFWPA;
- The contents of the notice and policy statement required to be provided by the employer to employees and job applicants prior to drug and alcohol testing;
- The types of testing allowed and required (job applicant testing, routine fitness-for-duty testing, follow-up testing, and post-accident testing);
- The consequences to the employee or applicant for refusing to test;
- The test itself;
- Drug and alcohol sample collection procedures;
- Procedures for reporting and reviewing test results;
- Employee protections;
- Substance abuse education and awareness requirements;
- Confidentiality of information and documents gathered in drug and alcohol testing programs, including the tests; and
- The employer’s application form to the Workers’ Compensation Division of the Department of Labor to adopt the Drug-Free Workplace Program.

Drug and alcohol testing covered by the DFWPA appears to include the testing of city employees according to procedures required under federal laws and regulations.

### ***Criminal Background Checks***

Cities may require potential employees to agree to release criminal background information to the city, to supply a fingerprint sample, and to submit to a criminal records check by the TBI and the FBI. Costs of the background check must be paid by the city but may be passed on to the successful applicant. The city may designate job titles or classifications to which this would apply. However, these classifications would not supersede any state requirements for a particular job (T.C.A. § 6-54-129). Another provision of law allows criminal background checks on applicants for a job as emergency medical technician or paramedic (T.C.A. § 68-140-525).

### ***Military Service***

Municipal employees are among the public employees guaranteed re-employment rights after active or reserve military service (T.C.A. § 8-33-101–108). Members of reserve components of the U.S. armed forces (including the National Guard) are entitled to leaves of absence while engaged in “duty or training in the service of this state, or of the United States, under competent orders.” They must be given such leave with pay not exceeding 15 working days in any one calendar year, including weekends if regularly scheduled for work (T.C.A. § 8-33-109). The intent of the pay provision is to allow employees to receive their regular pay, in addition to military pay, for two-week summer training camp and/or for weekends an employee is regularly scheduled for

work but has military duty. In addition, this section allows public employees to provide partial compensation to employees while serving under competent orders, in addition to the 15 days of compensation referred to above.

### ***Smoking Rights***

A municipality is prohibited from discharging an employee for using tobacco as long as the employee abides by the employer's work rules regarding tobacco use (T.C.A. § 50-1-304).

### ***Jury Duty***

Local governments are among the employers that must give employees time off with pay for jury services (T.C.A. § 22-4-108).

### ***Child Support***

A court may assign a municipal employee's income for child support. Any disciplinary or discharge action against the employee for this reason is prohibited (T.C.A. § 50-2-105).

### ***Automobile Insurance***

An accident by a municipal employee while driving a city-owned vehicle shall not increase that person's personal automobile insurance premiums (T.C.A. § 56-7-1108).

### ***Political Activities by Municipal Employees***

A local government employee has the same rights as other citizens of Tennessee to participate in political campaigns and run for certain elected offices. A city employee has the right to take an active part in local and state campaigns while off duty. However, a city employee is not qualified to run for election to the local governing body unless otherwise authorized by law or local ordinance (T.C.A. § 7-51-1501). (For political activity by police officers, see T.C.A. § 38-8-351 and "Political Activity by Police Officers" earlier in this chapter.)

### ***Convict Labor***

Municipal offenders confined or subject to confinement in a county or municipal jail may be sentenced to public service work for the municipality. The statute exonerates the municipality, its officers and its employees from liability to the offender, his or her family, or other persons for acts of the offender if the municipality exercised due care in supervising the offender (T.C.A. § 41-3-107).

A city also may apply to the state Department of Corrections district work project coordinator for probationer labor for a specific work project. There is no liability for injury to a probationer so involved if due care was taken in his or her protection and supervision (T.C.A. §§ 41-9-101 *et seq.*). A city also may apply to the county community work project coordinator for county probationer labor on specific projects (T.C.A. § 41-9-202).

Under another statute, a city may apply to the commissioner of Corrections to use convicts on public works projects, which the commissioner may allow if required conditions are met and the governor approves (T.C.A. § 41-22-127). A city's chief executive and the sheriff may make agreements for the city to use certain prisoners under city supervision "for such duties and manual labor as the municipality deems appropriate" (T.C.A. § 41-22-123(b)(2)). Convicts may also renovate substandard housing for low-income people (T.C.A. § 41-22-129) or perform work for a charitable or nonprofit corporation (T.C.A. § 41-22-148).

A juvenile court may order a child who is found delinquent to perform community service work for a municipality. T.C.A. § 37-1-131(a)(7) exonerates the municipality and its officers and employees from liability resulting from the juvenile's work if the municipality exercised due care in supervising the juvenile.

***Payment of Professional Privilege Tax***

T.C.A. § 67-4-1709 allows municipalities to pay the professional privilege tax for their employees subject to the tax.

# Economic Development

## Appropriations to Advertise and Promote a City to Attract Tourism

Spending municipal funds for advertising to attract new industries and tourists to a community is authorized by T.C.A. § 6-54-201–203. A city may make general fund appropriations up to \$30,000 annually (\$60,000 if involved in a joint effort with a county, presumably \$30,000 from each, but this is not stated explicitly). Additionally, a municipal governing body may levy a tax up to 2 cents to create a special fund for such purposes. An advertising tax in excess of that amount requires a referendum upon a petition signed by five percent of a city's registered voters.

## Convention Center and Tourism Financing

A municipality may create a tourism development zone in an area in which a public use facility is located or planned. The zone may not exceed one mile in radius from such facility, and the facility must have more than 250,000 square feet and cost more than \$75 million. The benefit of creating a zone is that the city will receive from state and local sales and use taxes an amount equal to the incremental increase in such taxes resulting from the facility, except when the rate increases. The municipality may enter into structured lease agreements relative to these facilities. The increase continues until the debt on the facility is paid off or it ceases to be used for public purposes (T.C.A. §§ 7-88-101 *et seq.*).

## Economic and Community Development Board

T.C.A. § 6-58-114 mandates that each county shall set up a board to advance economic and community development. All municipalities in the county are required to participate on this board, and the mayor or city manager of each municipality in the county is an ex officio member. The board must be established by interlocal agreement under T.C.A. § 5-1-113. The board is funded based on the per capita population of each participating governmental entity. When applying for any state grant, a city or county shall certify its compliance with the requirements of this statute.

## Appropriation of Funds for a Nonprofit Corporation

A city may appropriate money to any nonprofit charitable or civic organization "which provides year-round service benefiting the general welfare" (T.C.A. § 6-54-111). Nonprofit civic organizations are exempted from taxation pursuant to Section 501(c)(4) or (c)(6) of the Internal Revenue Code. Organizations falling in this category include chambers of commerce and other organizations that promote, maintain, and increase employment by promoting industry, trade, commerce, tourism, and recreation by inducing manufacturing, industrial, governmental, educational, financial, and other

enterprises to locate in the city. Any appropriation under this statute must meet guidelines issued by the state comptroller's office.

### Hotel/Motel Tax

Many cities fund tourism promotion programs with a hotel/motel tax. Home rule cities are authorized to levy a tax of up to five percent (T.C.A. § 67-4-1401–1425). General law cities (except those in certain counties, in which the municipality may levy the tax by ordinance passed by a two-thirds vote of the governing body) and private act charter cities must have special acts to authorize the tax. (See Chapter 7, "Municipal Revenues," for further discussion of this tax.)

### Regional Tourism Funding

The state provides a \$2 match for each \$1 (up to \$35,000 in annual local expenditures) spent on regional tourism promotion (T.C.A. § 4-3-2207(b)).

### Industrial Parks and Buildings

The state code includes four provisions municipalities may use to develop industrial parks

- Industrial Building Bond Act (T.C.A. § 7-55-101–116);
- Industrial Building Revenue Bond Act (T.C.A. § 7-37-101–116);
- Industrial Development Corporation Act (T.C.A. § 7-53-101–311); and
- Industrial Park Act (T.C.A. § 13-16-201–207).

### Industrial Building Bond Act

The Industrial Building Bond Act is highly restrictive. Cities may issue bonds and construct industrial buildings under this act, but the bonds must be approved by a three-fourths affirmative vote in a referendum (T.C.A. § 7-55-107).

The building may be up to 10 miles from the city limits. The bonds may be secured only by rentals from the building, or the city may additionally pledge its full faith and credit.

To proceed with the project, the city must get a certificate of public purpose and necessity from the building finance committee in the Industrial Development Division of the Department of Economic and Community Development. The committee is empowered not only to issue the certificate but also to determine

- The amount of bonds to be issued;
- The property to be acquired and acquisition terms;
- The expenditures that may be made in constructing and equipping the building; and
- The method of leasing the building.

The committee also has to require the maximum economically feasible use of solar heating systems and solar water heaters. If the city council refuses to follow all the committee's requirements, then any councilmember voting for the refusal is personally liable for any loss the city sustains (T.C.A. § 7-55-105–106).

### Industrial Building Revenue Bond Act

The Industrial Building Revenue Bond Act is for issuing industrial revenue bonds not backed by the city's full faith and credit to build industrial buildings. It requires a three-fourths majority vote in a referendum (T.C.A. § 7-37-101–116).

### Industrial Development Corporation Act

The Industrial Development Corporation Act allows creating a nonprofit corporation with broad powers to acquire and develop buildings and sites for economic development. Eligible projects for the corporation include everything from railroad lines to planetariums.

The act prescribes a detailed process for creating the corporation. Three or more people who are both city electors and city taxpayers may obtain a charter of incorporation from the secretary of state after their application has been approved in a resolution of a city's governing body. The resulting corporation must have at least seven directors who are elected by the city's governing body for staggered six-year terms. The directors must be both city electors and city taxpayers. No director may be a city officer or city employee.

Typically, the industrial development corporation recruits a company to build a plant in the community. To fund the construction, the development corporation sells industrial revenue bonds. The company uses the bond proceeds to build the plant. However, on paper, the development corporation holds title to the plant. The company runs its plant and gives the corporation annual payments to cover the bond principal and interest.

Since the loss of the federal income tax exemption for this type of industrial development bond, some industrial development corporations have issued taxable industrial development bonds as a legal way to give property tax breaks to new companies.

A city may not back the corporation's bonds with its full faith and credit unless a certificate has been issued by the building finance committee of the Industrial Development Division of the state Department of Economic and Community Development, and a three-fourths majority approves the question in a referendum.

A city may give property, assets, and loans to the corporation. A city may also develop infrastructure (power lines, water, sewer, etc.) in an industrial park and sign leases with the corporation.

Properties held by the corporation are tax exempt. The city may delegate authority to the corporation to negotiate in-lieu-of-tax payments from businesses using the corporation-owned properties (T.C.A. § 7-53-305).

### Industrial Park Act

The Industrial Park Act permits cities to build industrial parks and related economic development facilities without passing a three-fourths majority referendum to approve bonds. Pledging the full faith and credit of the city requires a referendum. But with state approval, a city council may act on its own to issue bonds pledging fees, rents, tolls, and other charges connected with an industrial park (T.C.A. § 13-16-203(2)).

The city is still required to obtain a certificate of public purpose and necessity, but the building finance committee's role is expanded. The committee has to determine that "the project is well conceived and has a reasonable prospect of success" and that "there is a good probability that the project will be self-sustaining." In making the "self-sustaining" determination, the committee counts not only revenues from selling and leasing land in the park, but also utility revenues, increased *ad valorem* taxes, and other tax revenues resulting directly from the industrial park.

If the committee approves the project, then the city may secure its bonds with pledges of proceeds from sales of municipal property, any or all utility revenues, any or all tax revenues, and any other revenues from fees, rents, and charges. The committee has to approve both the amount of bonds issued and the security pledged.

The city may use eminent domain to acquire industrial park property. It may develop and operate an industrial park itself or turn the responsibility over to an organization, such as an industrial development corporation. It may join with other local governments to develop and operate its industrial parks (T.C.A. § 13-16-201–207).

A municipality also may issue bonds for construction of a business park as long as the development is larger than five acres, the bonded indebtedness will not exceed 10 percent of the assessed value of the property in the community, and the project is well conceived and will not become a burden to the taxpayers. The procedure for issuing such bonds is the same as that for an industrial park (T.C.A. § 9-21-105 (21)(B)(i), T.C.A. § 9-21-402(B)).

### Industrial Highways

Municipalities are authorized to participate with the state and county in constructing and maintaining highways to secure an industrial site or park or to relieve related traffic congestion. The city will be responsible for the local share of the cost of such highways inside its jurisdiction. Any funds available to the city may be used for this purpose. The state Department of Transportation may use any funds not "specifically allocated by

legislative action to other categories of highway construction and maintenance” (T.C.A. § 54-5-401–406).

### Private-Purpose Utility Projects Prohibited

Cities are prohibited from constructing water and sewer projects for private purposes. Such purposes include any commercial project, commercial subdivision, private residence, or privately owned residential subdivision. It also includes constructing individual water and sewer lines beyond a meter that measures service or on private property where the municipality does not have an easement (T.C.A. § 7-35-401).

### Parking Authority

In counties with a population of more than 50,000, a public corporation (designated a “Parking Authority”) may be formed by the county or a city to construct and operate off-street parking facilities. The authority is under the control of a board of not fewer than five directors appointed by the mayor or county executive with the governing body’s approval. A governing body may amend the certificate of incorporation by resolution. If bonds extend beyond an authority’s duration, the municipality shall assume their obligations. Revenue bonds with up to 40-year terms may be issued and additionally secured by mortgages on facilities and/or on-street parking meter revenues. This act is not applicable in counties with a metropolitan form of government (T.C.A. § 7-65-101–124).

### Central Business Improvement Districts

There are four ways under two statutes that a city can create a central business improvement district. T.C.A. §§ 7-84-101–120 *et seq.* authorize the creation of a central business district by ordinance upon

- A petition signed by a numerical majority of the owners of real property who own two-thirds of the assessed value of the real property in the proposed district; or
- A city’s own initiative by resolution.

The actual organizational details, including those associated with funding the district, must be created by ordinance (T.C.A. § 7-84-202, T.C.A. § 7-84-207). Written protest against the creation of the district by this method by the owners representing more than one-half of the assessed value of the property to be included in the district will block the creation of the district. However, the municipality can amend the protestors out of the district’s boundaries.

T.C.A. §§ 7-84-501 *et seq.* authorize creating a central business improvement district by ordinance passed by a majority vote of the city’s governing body present and voting upon



- Petition of a numerical majority of the owners of real property who own at least two-thirds of the assessed value of the real property in the proposed district; or
- The city's own initiative by resolution.

See previous note regarding the resolution and ordinance (T.C.A. § 7-84-511 and T.C.A. § 7-84-515). The creation of the district may be blocked, and the municipality can remove the block in the same manner that applies to a district created under T.C.A. § 7-84-101–120.

Under T.C.A. §§ 7-84-501 *et seq.*, the city creates a “district management corporation,” which may be either a new or an existing body. The district management corporation acts as an advisory body “for the purpose of making recommendations for the use of special assessment revenues and for the purpose of administering activities within the district, the making of improvements within and for the district, and the provision of services and projects within and for the district.” The extent of the district management corporation’s powers is determined by ordinance. The city may contract with the district management corporation for services. The speakers of the Senate and the House each appoint to the district management corporation’s board of directors an *ex officio* representative and senator from the House and Senate districts in which the majority of the central business improvement district lies. (An alternative arrangement is made for Shelby County.)

Both laws give cities broad powers to make various improvements in central business improvement districts and the power to levy special assessments on property within such districts to finance improvements therein. The laws also prescribe methods of assessment.

## Connecting CBIDS

The governing bodies of two or more municipalities may enter into an agreement to connect their central business improvement districts. The connected district is subject to all provisions that apply to a single district (T.C.A. § 7-84-209). See also T.C.A. § 7-84-103(3).

## Inner-City Redevelopment Districts

T.C.A. §§ 7-84-601, *et seq.*, authorizes any municipality by ordinance to create a self-financing inner-city redevelopment district. These districts may not overlap CBIOS. The ordinance may be initiated by petition of owners of two-thirds of property to be included or by resolution of the governing body. The municipality may borrow money for public works improvements in the district and use special assessment revenues to pay it back. The authority to provide public works may be delegated to the governing body of the district.

## Redevelopment Authority

Housing authorities may serve as redevelopment authorities. Such authorities are empowered to undertake urban renewal projects and issue tax increment bonds to finance redevelopment projects. Blighted property may be acquired, cleared, and assembled for redevelopment. Under tax increment financing, the new tax revenue resulting from a successful redevelopment project is earmarked for public investments that made redevelopment possible. County approval is required unless county taxes are exempted from the tax increment provisions (except in Davidson and Shelby counties) (T.C.A. § 13-20-202–216).

## Local Development Authority: Industrial Development Loans

The Tennessee Local Development Authority has authority to issue notes or bonds whose proceeds may be used for loans to cities to finance constructing sewage treatment facilities, waterworks, correctional facilities, and resource and energy recovery facilities. The loan agreements are between the Department of Environment and Conservation and the city (T.C.A. § 4-31-101).

The state Funding Board and the Tennessee Local Development Authority are authorized to approve an application to the Department of Economic and Community Development for a loan of up to \$250,000 to a city of less than 25,000 population or to a county with no city of more than 50,000 population. Each must have had an unemployment rate for 12 months higher than the state average or an average per capita income below the state average for the previous 12 months. The loan's primary purpose must be to increase the number of manufacturing jobs. It may be used for water and sewerage facilities, land acquisition, site preparation, extending utilities, road access, and environmental monitoring equipment (T.C.A. § 4-31-301).

## Fraud Relative to Minority, Disadvantaged, and Small Business Programs

It is unlawful for a person to knowingly commit or engage in false or fraudulent conduct in order to qualify, assist another to qualify, or participate in a program for minority, disadvantaged, and small businesses administered by or through a state or local agency intended to enhance and encourage economic development. Such offenses are punishable according to the value of the property or services obtained (T.C.A. § 39-14-137).

## Local Enterprise Zones

Home rule municipalities are authorized to create an Enterprise Zone Management Board with authority to designate enterprise zones. Home rule municipalities wanting an

enterprise zone within their jurisdiction must apply to this board. To be designated an enterprise zone, an area must be in poverty and consist of underutilized or vacant lands. If a zone is designated, the local government may establish a nonprofit enterprise zone development corporation empowered to own property, solicit and accept grants, and make loans and grants. Various incentives can be provided that encourage enterprise zone development (T.C.A. § 13-28-201–211).

### Disclosure of Economic Development Agreements; Conditions and Term of Agreements

All economic development agreements granting property tax incentives must be submitted in writing to the chief executive officer of each jurisdiction in which the property is located and to the state comptroller. The agreement must be submitted within 10 days after execution. To determine the exempt status of property subject to the agreement, the parties may petition the local and state boards of equalization for adjudication in the manner required for filing local assessment appeals (T.C.A. §§ 4-17-301 *et seq.*). Lessees must make annual reports to the state board of equalization on property leased and in-lieu-of-tax payments made (T.C.A. § 7-53-305(e)).

T.C.A. § 7-53-305(b) requires each agreement to have a cost-benefit analysis attached as required by the commissioner of Economic and Community Development. Agreements are limited to 20 years, including extensions, unless both the commissioner of Economic and Community Development and the comptroller make a written determination that the agreement is in the best interest of the state.

### Tax Increment Financing and Economic Impact Plans for Industrial Development

T.C.A. § 7-53-312 authorizes and establishes procedures for using tax increment financing and economic impact plans for industrial development.

### Courthouse Square Revitalization

The Courthouse Square Revitalization Pilot Project Act of 2005 allows one municipality in each grand division of the state that is the county seat of a county with a population of 120,000 or less to apply for designation as a courthouse square revitalization zone. The commissioner of Finance and Administration administers the program and designates the municipality. When a municipality is designated, sales and use tax revenue collected in the zone will be allocated to the municipality for use in the zone (T.C.A. §§ 6-59-101, *et seq.*).

# Business Regulation

## Adult-Oriented Businesses

Three state laws regulate adult-oriented businesses

- T.C.A. §§ 7-51-1101 *et seq.* (Adult-Oriented Establishment Registration Act of 1998). Counties are authorized (but not required) to adopt by a two-thirds vote the Adult-Oriented Establishment Registration Act of 1998. That act expressly preserves the right of municipalities to adopt and enforce “other lawful and reasonable restrictions, regulations, licensing, zoning, and other criminal, civil, or administrative provisions concerning the location, configuration, code compliance, or other business operations or requirements of adult-oriented establishments” (T.C.A. § 7-51-1121). The act defines and covers adult bookstores, adult mini-motion and motion picture theaters, adult cabarets, escort agencies, sexual-encounter centers, massage parlors, rap parlors, saunas, and similar businesses. In any county that has adopted the act, such businesses must obtain a license from the county. The act prescribes the rules and regulations that adult-oriented businesses must follow, and the adult-oriented establishment board (created by the county) is empowered to adopt additional rules and to suspend and revoke the licenses of adult-oriented businesses. In addition, first offenders may be fined up to \$500. A second or subsequent offense is a Class A misdemeanor. This statute was upheld in the unpublished case of American Show Bar Series Inc. v. Sullivan County, 2000 WL 277178 (Tenn. Ct. App. March 15, 2000).

Municipalities that disqualify persons with criminal records from operating or performing in these establishments are required to conduct a criminal records check on applicants through the TBI and FBI. The city must require two sets of fingerprints, which must be sent to the TBI. Costs must be paid by the city but may be added to the application fee (T.C.A. § 7-51-1122). T.C.A. § 27-9-111 makes mandatory the judicial review of decisions of boards and commissions that revoke, suspend, or deny permits or licenses required for engaging in adult businesses. The court must hear and decide the matter within 40 days of the date the court granted *certiorari*.

- T.C.A. § 57-4-204. This statute prohibits certain sexual and pornographic conduct in establishments that sell intoxicating liquor. Generally, the Alcoholic Beverage Commission is the agency designated to enforce the statute. However, the statute expressly provides that “Each county, city, or metropolitan government is empowered upon approval by a two-thirds vote of its legislative body to authorize its law enforcement officers to conduct investigations into alleged violations of subsections (a)-(d) [which contain the prohibited conduct], and such law enforcement officers shall report such

violations to the commission for appropriate action by such commission” (T.C.A. § 57-4-204(e)).

- T.C.A. § 39-13-511. This statute prohibits public indecency, the definition of which includes various kinds of sexual activities. Its definition of “public place” includes streets, sidewalks, parks, beaches, and business and commercial establishments of various kinds. It preserves the right of local governments to regulate “any activity where alcoholic beverages, including malt beverages, are sold for consumption” (T.C.A. § 39-13-511(a)(6)). First and second offenses are Class B misdemeanors carrying a fine of \$500. A third or subsequent offense is a Class A misdemeanor with a fine of \$1,500 and a jail term of up to 11 months, 29 days.

Many municipalities also have ordinances regulating adult-oriented businesses. At both the state and local levels, the most successful approach to the regulation of such businesses generally has been based upon the regulation of their “secondary effects.” (See U.S. Supreme Court cases *Renton v. Playtime Theaters Inc.*, 475 U.S. 41 (1986); *Barnes v. Playtime Theaters Inc.*, 501 U.S. 560 (1991); and *City of Erie v. Pap’s A.M.*, *tbda* “Kandyland,” 130 S.Ct. 1382 (2000)). Competent legal advice should be sought and the federal and state cases interpreting the above and similar statutes in other jurisdictions should be read before a municipality adopts or enforces either a state law or municipal ordinance regulating adult-oriented businesses.

### Antique Dealers’ Records

Antique dealers are required to keep records containing specified information for any item they purchase “exceeding the value of \$50” and to preserve (no time period is specified, so presumably permanently) such records for inspection at any time by any city or county police officer (T.C.A. § 62-22-101). Dealers in antique, used, or scrap jewelry and precious metals must keep certain records and deliver daily to the police chief copies of logs containing specified information (T.C.A. §§ 38-1-201 *et seq.*).

### Pawnbrokers

Cities may adopt state provisions regulating pawnbrokers and other regulations they “may deem right and proper.” Cities may not regulate interest, fees, insurance charges, hours, types of pawn transactions, or license requirements, nor may cities make requirements other than those under the state statutes. A law enforcement official of a city may not charge a pawnbroker for receiving or processing daily reports or pawn tickets or any other information required by the law enforcement official. The state code intimates that even though a city may not license pawnbrokers, a city may suspend or revoke a pawnbroker’s license if the owner, major stockholder, or managing partner is convicted of violating the state statute. Upon request, pawnbrokers must furnish law enforcement agencies with the names of suppliers from whom they bought merchandise

for resale (T.C.A. §§ 45-6-201 *et seq.*). Pawn shop operators in Knox and Shelby counties must obtain the thumbprint or fingerprint of the pledger (T.C.A. § 45-6-209).

## Beer

A city may, by ordinance, prohibit beer sales within the city, or it may, by ordinance, prescribe regulatory measures not conflicting with state laws. These measures may include

- Fixing a maximum number of permits;
- Restricting beer permittees to certain zones;
- Establishing distance regulations from residences, schools, churches, and other public gathering places;
- Establishing opening and closing hours; and
- Setting other rules to protect the “public health, morals, and safety.”

One exception is found in T.C.A. § 57-5-109, which prohibits cities from denying a beer permit to a business based on proximity to a school, residence, church, or other place of public gathering if a permit had been issued to a business on that same location. The statute defines “on that same location” as being within the same parcel or tract.

To enforce these regulations, a city must establish a board to issue beer permits. The governing body may constitute itself as a beer board for this purpose. Applicants who meet all conditions prescribed by state law and city ordinances must be issued a permit. If they are refused, they may seek a trial *de novo* in a circuit or chancery court.

Municipalities may have different permit classes. For example, cities may allow on-premise consumption or restrict permits to package sales.

A city may prohibit sales at places where they would cause traffic congestion. Municipalities must prohibit sales to minors. No applicant or any person employed by an applicant shall have been convicted of any liquor law violation or a crime involving moral turpitude within the previous 10 years.

A permit may be revoked or suspended by a beer board for failure to comply with any state law or city regulation, including the failure to pay the privilege tax and provide information required by the city. Appeal of such a decision may be taken to a circuit or chancery court. In lieu of revocation or suspension, a beer board may impose a civil penalty not exceeding \$1,500 for each offense involving sales to minors, or it may levy a penalty not exceeding \$1,000 for any other offense. Acceptance of a civil penalty by a city prevents the city from imposing any other punishment or penalty for that offense (T.C.A. § 57-5-101–109).

Beer boards are required to consider repeated violations of any local ordinance or state law related to prohibited sexual contact on the premises of adult-oriented

establishments when considering suspending or revoking a permit (T.C.A. § 57-5-108(c)).

A city may not impose training or certification requirements on employees of a permittee if the employees have server permits issued by the Alcoholic Beverage Commission (ABC) (T.C.A. § 57-5-106(a)).

## Sale of Intoxicating Liquors

Regulating the liquor industry is primarily a state function, but counties and cities may adopt regulations that do not conflict with those of the state. Package stores and the sale of liquor-by-the-drink must be approved by referendum, an option open to cities that have been incorporated for five or more years with a population of 925 or more people (except in four excluded counties). Banning such stores can likewise be accomplished by referendum (T.C.A. § 57-3-106, T.C.A. § 57-4-103).

T.C.A. § 57-4-101(a) lists several entities in which liquor-by-the-drink may be sold without a referendum. Among these are cities and counties that have elected to be a Tennessee River Resort District under T.C.A. § 67-6-103(a)(3)(F).

Applicants for a package store license from the state must first obtain a certificate signed by the mayor or a majority of the city governing body stating that

- The applicant(s) to be in actual charge or the corporation officers (or those in control) have not been convicted of a felony within 10 years preceding the application date;
- A business site that meets all local requirements has been acquired; and
- The application conforms to any limit established on the number of retail licenses.

Failure to act within 60 days on an application for such certificates shall constitute approval. Cities and counties are authorized to control the location and number of licenses as long as they do not “unreasonably restrict the availability of alcoholic beverages” to their residents. An appeal of a certificate denial may be taken to a chancery court within 60 days (T.C.A. § 57-3-208). State law regulates hours during which sales may be made for consumption on the premises, but the ABC may expand those hours. Cities may opt out of or into the hour expansion adopted by the Alcoholic Beverage Commission (T.C.A. § 57-4-203(d)).

An elected or appointed public officer may not hold a liquor license or have any interest in any wholesale or retail liquor business (T.C.A. § 57-3-210).

T.C.A. § 57-3-707 allows servers in liquor-by-the-drink establishments to work 61 days after being hired without a server permit.

The law permits a city to impose the following annual privilege taxes on places serving drinks for consumption on the premises

- \$300 for a private club;
- \$600 to \$1,000 for restaurants, according to seating capacity;
- \$1,000 for a hotel or motel;
- \$1,500 for a premiere-type tourist resort; and
- Other amounts for several other classifications (T.C.A. § 57-4-301).

Cities may levy, by ordinance, inspection fees on retail liquor licensees (package liquor stores) based on wholesale liquor prices not exceeding eight percent in counties with a population of less than 60,000 and in counties in which a premier tourist resort city is located, and not more than five percent in other counties. Population is to be taken from the most recent federal census (T.C.A. § 57-3-501).

State highway patrol and Alcoholic Beverage Commission officers and agents are empowered to help local law enforcement personnel enforce liquor statutes in cities that have not authorized liquor sales by local option elections (T.C.A. § 57-3-412(b)).

### Closing-out Sales

A city may elect to regulate “going-out-of-business” sales by requiring licenses and verifying the authenticity of such sales (T.C.A. § 6-55-401–413). Failing to comply with municipal regulations of liquidation sales is an unfair or deceptive trade practice under T.C.A. § 47-18-104.

### Fire and Burglar Alarms

The Alarm Contractors Licensing Act of 1991 prohibits municipalities and counties from offering services as an alarm system contractor except for facilities wholly owned by the municipality or county. Municipalities may provide monitoring and response service to alarm systems if

- No charge is made for the service;
- Using the local government service is not mandatory; and
- Response by law enforcement officials, firefighters, and other emergency personnel is not conditioned on using the service.

No municipality may enact any regulations relating to licensing alarm businesses after July 1, 1991. Any municipal regulation requiring certification or licensing of alarm businesses or their employees is superseded.

A municipality may impose a fine not exceeding \$25 for each false alarm unless the false alarm is due exclusively to a violent act of nature.

A municipality may require alarm businesses and agents to register their names,



addresses and license certificate numbers. A city may not impose a fee or require an application for this registration (T.C.A. §§ 62-32-301 *et seq.*).

### Fire Extinguisher Firms

Regulating fire extinguisher firms is exclusively a state function except that a municipality may require permits for installing fire extinguisher systems and require that the installation of such systems conform to applicable building codes and requirements (T.C.A. §§ 62-32-201 *et seq.*).

### Junkyards

Restrictions have been imposed on junkyards located within 1,000 feet of an interstate or primary highway. They are enforced and implemented by the Tennessee Department of Transportation. “Junkyard” includes a place where 10 or more abandoned motor vehicles are stored and any place that stores, buys, or sells junk (T.C.A. §§ 54-20-101 *et seq.*), but it does not include recycling centers as defined in T.C.A. § 54-20-103(4) or solid waste facilities registered under T.C.A. § 68-211-106. Otherwise, the definition of “junk” includes a wide variety of materials. A municipality is empowered to enforce regulations at least as stringent as those established under this statute for city streets that are in the state highway system (T.C.A. § 54-20-103 *et seq.*).

### Automobile Graveyards

For city streets that are not a part of the state highway system, a municipality is empowered by ordinance to license and regulate “any lot or place which is exposed to the weather” where more than five motor vehicles, not economically practical to make operative, are located (T.C.A. § 7-51-701).

### Penalty for Harassment

If a city brings a civil action against a small business and does not prevail, and the business demonstrates that the city’s actions were arbitrary, capricious, or brought in bad faith to harass, then the court may award the business reasonable fees and other expenses up to \$10,000 (T.C.A. § 29-37-101–106).

### Sale of Fireworks

The state requires anyone manufacturing, distributing, selling, or displaying fireworks to have a permit issued by the state fire marshal. An application for a retailer’s permit must be accompanied by a statement from the chief executive of the county or municipality in which the fireworks are to be sold that selling fireworks within such county or municipality is permissible. It is illegal to sell any fireworks in a county or municipality where sale has been made illegal by ordinance or law. It also is illegal to ship fireworks

for sale at retail into one of those municipalities or counties (T.C.A. § 68-104–105).

In counties where sales are not prohibited, a city may by private act or ordinance regulate, restrict, or totally prohibit the sale of fireworks within the city (T.C.A. § 68-104–116). Public displays are allowed where sales are permitted. But within such a city, a display permit application must bear the “signed approval of the chief supervisory official of the fire and police departments” (T.C.A. § 68-104–107). Retail sales of Class C common fireworks are prohibited in any county of more than 200,000 population except in any city therein with a population of 600 to 620 that permitted such sales before 1984 (T.C.A. § 68-104-112(a)(4)).

### Regulation of Taxicabs and Similar Vehicles

Municipalities are empowered to license, control, and regulate taxicabs by ordinance or resolution. The statute outlines the scope of this authority and extends to a municipality the full extent of antitrust immunity accorded to the state as sovereign under state and federal laws. Governmental entities in a county of 287,700 to 287,800 (Hamilton County) are exempted from this law. Governmental entities in counties with more than 500,000 population (Shelby and Davidson) also may regulate limousine, sedan, shuttle, and taxicab services (T.C.A. § 7-51-1001–1007). T.C.A. § 6-54-128 requires a criminal records check on cabdrivers through the TBI and FBI by municipalities in counties with over 100,000 population that choose to license and regulate persons operating vehicles for hire and disqualify those convicted of specified crimes.

### Regulation of Towing or Wrecker Companies

Federal law (49 U.S.C. § 14501(c)) restricts municipal regulation of towing and wrecker companies. Under the noted federal statute, which deregulated the motor carrier industry, including towing companies, it appears that municipalities may do only the following relative to towing and wrecker companies

- Regulate the price of nonconsensual tows;
- Establish standards for towing businesses that perform work for the city itself as a market participant; and
- Regulate safety aspects of the towing business where this authority is delegated by the state.

All other business regulation of towing companies appears to be preempted. See *Petrey v. City of Toledo*, 246 F. 3d 548 (6th Cir. 2001) and *City of Columbus v. Ours Garage and Wrecker Service*, 122 S. Ct. 2226 (2002).

## False Claims

T.C.A. §§ 4-18-101 *et seq.* make any person or entity that makes a false or fraudulent claim against the state or any municipality liable for three times the amount of damages. In addition, the person or entity is liable for court costs of a civil action to recover these damages and for a civil penalty of not less than \$2,500 nor more than \$10,000.

## Manufactured Homes

State law provisions regulating the installation of manufactured homes preempt any local ordinances that regulate their installation (T.C.A. § 68-126-412).

## Price Gouging During States of Emergency

T.C.A. §§ 47-18-5101 *et seq.* and 47-18-104 make it unlawful for businesses to charge excessive prices for essential goods during states of emergency. Local ordinances prohibiting and penalizing similar conduct are not preempted.

## Limited License Plumbers

State law regulates limited license plumbers (plumbers who do less than \$25,000 in total plumbing work). Municipalities may have stricter testing and experience requirements. The state law also makes other allowances for local regulation of these plumbers. The state law apparently does not apply in the 24th and 25th senatorial districts (T.C.A. §§ 62-6-401, *et seq.*).

## Sport Shooting Ranges

Owners, operators, and users of a sport shooting range are granted protection from nuisance and other types of liability not involving bodily injury when the range complied with noise control ordinances in effect at the time the range began operation. For ranges that open for operation after July 1, 2004, this protection from nuisance liability does not apply until one year after the range begins operation (T.C.A. § 39-17-316).

## Charitable Gaming

Municipalities may not regulate charitable gaming (T.C.A. § 3-17-111 and 39-17-659).

## Environmental Quality

### Solid Waste

#### ***Solid Waste Management Act of 1991***

The Solid Waste Management Act of 1991 outlines a comprehensive process for dealing with Tennessee's municipal solid waste. Counties must have created solid waste regions and established a solid waste regional board by December 1992 (T.C.A. § 68-211-813). The act encourages forming multicounty regions, but a single county may constitute a region. Cities that collect and dispose of solid waste have a right to appoint representatives to the region's board. Through regional plans, regional boards have the authority to approve applications for new or expanded landfills or incinerators in their territory and to restrict waste coming in from outside the region (T.C.A. § 68-211-813–814, T.C.A. § 68-211-817).

Each region shall have a plan for a 10-year disposal capacity and for achieving 25 percent waste reduction by December 31, 2003, based on 1995 levels of waste going to landfills and incinerators. The counties may create a solid waste authority to implement the regional plan, or the region's board may assign responsibilities to existing governmental entities (T.C.A. § 68-211-814, T.C.A. § 68-211-861, T.C.A. § 68-211-902).

The act also authorizes the region to impose and collect a solid waste disposal fee. Funds from these fees are to be used to establish and maintain solid waste collection and disposal services, including convenience centers and collection centers for whole waste tires, lead-acid batteries, and/or used oil. Cities and counties must use a uniform solid waste financial accounting system developed by the state comptroller (T.C.A. § 68-211-835, T.C.A. § 68-211-866, T.C.A. § 68-211-874).

Every development district was required to submit a solid waste needs assessment for each county in the district by September 1992. The needs assessment must have been revised to reflect changes in the district by April 1, 1999. It must be revised every five years thereafter (T.C.A. § 68-211-811).

All landfills accepting municipal solid waste must pay a surcharge to the state. The surcharge is 75 cents per ton from July 1, 1998, through June 30, 2008. The surcharge applies only to Class I solid waste disposal facilities and incinerators (T.C.A. § 68-211-835).

The act makes it unlawful to deposit solid waste into the waters of the state and to burn solid waste except in accordance with state regulations. It also is unlawful to construct or alter a solid waste processing or disposal facility or to transport, process, or dispose of solid waste in violation of rules and regulations established by the commissioner of

Environment and Conservation or the Solid Waste Disposal Control Board (T.C.A. § 68-211-104). The state also exercises general supervision and regulation over all solid waste disposal facilities in the state, including the authority to review and approve federal grants or loans to cities for constructing or modifying such facilities (T.C.A. § 68-211-105–109).

### ***Closed Trucks***

Refuse, garbage, etc., must be hauled in a closed-body truck or covered securely with a tarpaulin. In addition, all trucks hauling litter to an energy recovery facility and having a gross weight of less than 16,000 pounds must carry the litter in an enclosed space unless the truck has a hydraulic lift system (T.C.A. § 39-14-501–503).

### ***Resource Recovery Facilities***

T.C.A. § 68-211-501–505 empower any city to construct and operate an “energy or resource recovery facility ... within its corporate limits or within the limits of the county wherein it is located,” and a 1974 act authorizes state loans for such purposes. A 1976 act intending primarily to permit local governments to participate in a TVA-sponsored plan for using solid waste as fuel empowers cities and counties to join in any such enterprise. The act is sufficiently general to permit participation in any such plan, not necessarily only those sponsored by TVA. The act would apply to any facility with a primary objective of recovering energy and a secondary objective of recovering recyclable materials (T.C.A. § 7-58-101–110).

Contracts for using solid waste for resource and fuel recovery or among counties and cities for cooperative solid waste operations may not exceed 40 years (T.C.A. § 7-58-103–104).

### ***Used Oil Collection Act of 1993***

The Used Oil Collection Act allows the Tennessee Department of Environment and Conservation to make grants or loans to cities to establish and operate used oil collection centers. Grants and subsidies may also be available to local governments to buy equipment that burns used oil as fuel. In awarding the latter grants, priority will be given to local governments that have created used oil collection centers. The grants are funded by a 2 cents per quart fee on automotive oil, paid by distributors. The act contains extensive regulations governing used oil collection centers (T.C.A. §§ 68-211-1001 *et seq.*).

## **Hazardous Waste**

### ***Hazardous Waste Permit***

When the state considers an application to permit a hazardous waste site within a municipality or within a mile of a municipality, the city council must vote within 90 days to accept, reject, or modify the application. The city must send the state a report that addresses a series of questions. The questions ask whether the facility

- Minimizes incompatibility with the surrounding area and its effects on the value of the area;
- Minimizes the impact on traffic flow; and
- Meets zoning requirements for hazardous solid waste facilities.

Before issuing or denying the permit, the state commissioner of Environment and Conservation must affirm, reverse, or modify the decision of the local government (T.C.A. § 68-212-108).

Applicants for hazardous waste storage or disposal facilities must hold a public meeting and complete a community impact statement before submitting a permit application (T.C.A. § 68-212-108). T.C.A. § 68-212-105 makes it unlawful to place a new commercial hazardous waste facility closer than 1,500 feet to residential, day-care, church, park, or school property.

### ***Hazardous Waste Plans and Reports***

The Tennessee Hazardous Waste Reduction Act of 1990 requires hazardous waste generators to classify themselves as large or small, prepare hazardous waste reduction plans, and file annual reports with the state (T.C.A. § 68-212-301–312).

### ***Superfund and Hazardous Waste Sites***

The commissioner of Environment and Conservation is required to notify the register of deeds in each county in which property has been placed on the list of inactive hazardous substance sites. The register must record a notice that the property has been so listed. This notice effectively freezes any loan for development of the site until the environmental problem is addressed and the notice is removed.

Local governments are not liable for cleanup of hazardous waste sites if they acquire ownership through tax delinquency, bankruptcy, abandonment, or similar circumstances. This exemption does not apply if the government contributed to releasing hazardous materials or if liability has been otherwise adjudicated (T.C.A. § 68-212-101–302).

### **Local Air Pollution Regulations**

The state is responsible for a comprehensive state program to minimize air pollution.

Municipalities and counties are empowered to enact regulations that are not less stringent than the state's regulations, which shall prevail so long as a certificate of exception granted by the Air Pollution Control Board is in effect. Periodic review by this board is required to determine whether such exemption should be continued.

Certificates are issued for periods not to exceed two years (T.C.A. § 68-201-115). Such local air pollution regulations are not applicable to "any air contaminant source ... which burns wood waste solely for the disposition of such wood waste" (T.C.A. § 68-201-115(c)). The \$25,000 per day state penalty also is applicable to violations of municipal

regulations. Municipal penalties are cumulative and in addition to state penalties (T.C.A. § 68-201-116).

### **Boat and Marina Sewage**

It is unlawful to operate a boat with a marine toilet that discharges untreated sewage into the waters of the state. Commercial boating facilities that house vessels equipped with toilets must provide facilities for sanitary pumping and disposal from the boats' holding tanks, or they must have an agreement with a marina that is so equipped (T.C.A. § 69-10-102, T.C.A. § 69-10-216(g)).

### ***Underground Storage Tanks***

Cities with underground storage tanks for petroleum must comply with state and federal monitoring and replacement requirements. The state Underground Storage Tank Board oversees enforcement of the state program and collects tank fees to pay for the program. The program establishes limits of financial responsibility for cleanup and third-party claims and establishes a voluntary registry for owners of an interest in a petroleum site. There are also certain restrictions and deadlines that must be met for reimbursement to be made from the UST fund. Failure to meet these restrictions and deadlines could make a city ineligible for reimbursement for a release of pollutants (T.C.A. § 68-215-101–130).

### **Pesticides**

Municipalities are prohibited from regulating the sale and use of pesticides. Also prohibited is regulation of registration, notification of use, advertising, marketing, distribution, applicator training or certification, storage, transportation, disposal, disclosing confidential information, or product composition. The statute does not limit a city's authority to zone for storage or designate sites for disposal, regulate discharge to sanitary sewers, or implement a pest management plan required by the Safe Drinking Water Act. The state may enter into an agreement with cities with a population of greater than 250,000 to enforce the provisions of the Tennessee Insecticide, Fungicide, and Rodenticide Act (T.C.A. § 43-8-114–115, T.C.A. § 62-21-118, T.C.A. § 62-21-129).

### **Caves**

It is a criminal offense to deface or destroy caves and caverns or to force open a gate guarding a cave entrance (T.C.A. § 11-5-108).

### **Environmental Protection Fund**

An environmental protection fund provides additional funding for the state Department of Environment and Conservation. Revenues from fees, civil penalties, and damages

are used to improve the state's performance in permitting, monitoring, investigation, enforcement, and department administration.

Fees are charged to municipalities that submit applications and/or plans to build or modify municipal water, wastewater, and solid waste disposal operations. In addition, some annual maintenance fees are charged to municipalities for state oversight of these facilities (T.C.A. § 68-203-101–105).

### **Brownfields**

T.C.A. § 68-212-224–226 create a voluntary brownfield redevelopment program. Under this program, the commissioner of Environment and Conservation may make grants and loans to local governments from federal and state funds for cleanup of disposal sites or brownfields.

### **Land Application of Wastewater**

The commissioner of Environment and Conservation may allow otherwise illegal discharges of wastewater, including land application, under a conditional permit from the department (T.C.A. § 69-3-108(e)).



# Health and Sanitation

## Health Departments

Local health services are primarily state and county functions. Any city in a county with an established health department may cooperate in the maintenance of that department and levy taxes to pay its proportionate share (T.C.A. § 68-2-605). Cities also may participate in a multicounty district (T.C.A. § 68-2-701). T.C.A. § 68-9-504 requires city and other health officers involved in tuberculosis control to notify appropriate health authorities in other jurisdictions when an infected individual relocates from Tennessee.

## Hospitals

Regulating local hospitals and other health care centers is a state function (T.C.A. §§ 68-11-201 *et seq.*). A hospital built with private funds may be maintained with public funds for up to five years, provided the contract specifically states that the facility is for public use. Cities also may contribute land or money for public welfare hospitals (T.C.A. § 68-11-501–507).

## Mental Health and Mental Retardation Programs

Within the limits of state appropriations, the commissioner of Mental Health and Mental Retardation, with approval from the commissioner of Finance and Administration and the state comptroller's office, is empowered to make grants to cities, counties, nonprofit corporations, or combinations thereof for constructing, maintaining, or operating mental health or mental retardation facilities, programs, or services (T.C.A. § 33-1-202).

## AIDS

People convicted of rape must be tested for HIV (human immunodeficiency virus), and their victims must be notified of the results (T.C.A. § 39-13-521).

A person who engages in prostitution knowing that he or she is HIV-positive is guilty of a Class C felony (T.C.A. § 39-13-516).

## Animal (Rabies) Control; Animal Euthanasia

Beginning July 1, 2005, state law provides for an anti-rabies program under the state Department of Health. Municipalities may enact local ordinances requiring registration of dogs and cats. Fees must be used in the rabies or animal control program.

Municipalities with their own rabies control programs are exempt from this law as long as the local program meets the minimum requirements of this law (T.C.A. §§ 68-8-101 *et seq.*).

T.C.A. § 44-17-301–303 governs the manner of destroying non-livestock animals, including dogs and cats, in municipal animal shelters. However, T.C.A. § 63-12-141 requires the Board of Veterinary Medical Examiners to certify qualified persons as animal euthanasia technicians. That statute also allows only licensed veterinarians, licensed animal technicians who work under the supervision of a veterinarian, and certified animal euthanasia technicians to perform animal euthanasia. T.C.A. § 44-17-303 requires that a veterinary technician also must have successfully completed a euthanasia certification course before administering euthanasia. It is a Class B misdemeanor for individuals or entities to imply that they have been granted a certificate by the Board of Veterinary Medical Examiners unless such a certificate has been granted. The Tennessee Spay/Neuter Law (T.C.A. Title 44, Chapter 17, Part 5) provides for the neutering of dogs and cats before or after adoption from an animal shelter.

### Septic Tanks

Subsurface sewage disposal systems are regulated by the state, with local (county) health officials responsible for enforcement. No subdivision plan may be approved locally or by the State Planning Office until it has been approved and a permit has been issued by the state Department of Environment and Conservation (T.C.A. §§ 68-221-401 *et seq.*).

### Hazardous Chemicals

The Hazardous Chemical Right-to-Know Law of 1985 contains detailed and extensive requirements for providing employees with full information concerning the hazards of any chemicals used in their workplace. Municipalities are included in the act's definition of non-manufacturing employers. Compliance with the act does not affect an employer's liability regarding the health and safety of an employee, nor does compliance absolve the employer of taking action to prevent occupational disease under any other law. The law supersedes any municipal ordinance in effect on January 1, 1986, and no ordinance on this subject may be enacted after this date (T.C.A. §§ 50-3-2001 *et seq.*).

### Slum Clearance; Dirty Lots

See Chapter 21, "Code Enforcement and Building Inspection."

## Chapter Sixteen

# Utilities

### Municipal Authority to Operate Utility Systems

Municipalities acquire, own, and operate their water, sewer, electric, and gas systems under several general laws and their municipal charters. Generally, under each of the general law statutes, a utility system may issue revenue bonds, exercise eminent domain, and provide utility services outside the limits of its parent municipality. (Other laws that apply generally to utilities are found in the next section, “General Provisions.”)

The applicable statutes are

- T.C.A. §§ 7-34-101 *et seq.* The Revenue Bond Law authorizes municipalities to acquire, own, and operate water, sewerage, electric, and gas systems, along with parking operations. Under this statute, the utility:
  - a. May not construct any public works within the corporate limits of another municipality without the latter’s consent (T.C.A. § 7-34-105);
  - b. Must charge municipalities the same rates for utility services that other customers are charged under similar conditions (T.C.A. § 7-34-108);
  - c. Must impose rates and charges that will ensure the system is self-supporting (T.C.A. § 7-34-114–115).

The municipality may appoint a board to operate the utility system, or it may run the system itself.

- T.C.A. § 7-35-401 authorizes municipalities to acquire, own, and operate water and sewer systems under a board of waterworks and/or sewer commissioners appointed by the municipality’s governing body. Alternatively, the governing body may, by ordinance, serve as that board (T.C.A. § 7-35-406). Under this law
  - a. The city’s governing body sets fees and charges for the utility system, which must be sufficient to support the system.
  - b. A municipality that owns a gas system may transfer jurisdiction over the system to the board.
  - c. Municipalities must pay for utility services.
- T.C.A. §§ 7-52-101 *et seq.*, the Municipal Electric Plant Law of 1935, requires the utility to be operated under a board of public utilities, which includes a member of the municipality’s governing body (or the city manager) appointed by the mayor with the consent of the municipality’s governing body. Alternatively, the city’s governing body may function as the board of public utilities. Municipalities operating a waterworks, sewer works, or gas system may transfer jurisdiction over the system to the board of public utilities. Most of the municipal electric systems in the state operate under this law.

## General Provisions

### ***Limitations on Expenditures of Municipal Utility Revenue***

Although T.C.A. § 7-34-115 is part of the Revenue Bond Law, it probably applies to all utility systems. It requires that “as a matter of public policy, municipal utility systems shall be operated on sound business principles as self-sufficient entities. User charges, rates, and fees shall reflect the actual cost of providing the services rendered” (T.C.A. § 7-34-115(a)). Under this statute, all municipal utility revenues must be spent on

- Payment of operating expenses;
- Bond interest and retirement and/or sinking fund payments;
- Acquisition and improvement of public works;
- Contingencies;
- Payment of other operations, maintenance, and service cost obligations;
- Redemption and purchase of bonds;
- Creation and maintenance of a cash working fund;’
- Payment to the general fund of a return on equity invested by the general fund to a maximum of six percent (the term “equity investment” is defined in the statute); and
- Upon the request of the governing body by resolution, in-lieu-of-tax payments on the property of the public works within the municipality not to exceed the amount of taxes payable on “privately owned property of a similar nature.” (For resolution of conflicts between this provision of T.C.A. § 7-34-115 and other tax equivalency statutes, see the next section, “Utility System Tax Equivalent.”)

Any remaining utility revenues shall be used solely for rate reduction.

Municipalities may make covenants with the purchasers of bonds concerning the use and disposition of revenues as to the application order of such revenues and as to limitations on the amount of the return on the equity of investment or payment in lieu of taxes to the municipality.

The statute contains other information useful in explaining allowed expenditures of municipal utility revenue and procedures for spending the money under the above provisions. It also contains the penalty for the violation of the statute.

### ***Voluntary Contributions for Community Assistance***

T.C.A. § 7-34-115 and 7-52-103 allow municipal electric and utility systems to accept and distribute voluntary contributions for charitable purposes. This may include programs in which the utility bill is rounded up to the nearest dollar. The contribution must be shown as a separate line item on the bill. Contributions are not considered revenue to the utility and must be used for community assistance and economic development.

### ***Utility System Tax Equivalentts***

T.C.A. § 7-34-115 provides that, upon the request of the municipal governing body by resolution, the utility system shall pay to the municipality in-lieu-of tax payments on the property of the public works within the municipality not to exceed the amount of taxes payable on privately owned property of a similar nature. However, where that statute conflicts with the Municipal Gas System Tax Equivalent Law (T.C.A. § 7-39-401) or the Municipal Electric System Tax Equivalent Law of 1987 (T.C.A. §§ 7-52-301 *et seq.*), the latter statutes prevail. Those statutes contain complicated formulas for the payment in-lieu-of taxes to municipalities.

### ***Eminent Domain***

Several statutes empower municipalities to condemn land and property rights within and/or outside city limits for utility purposes (T.C.A. § 7-34-104, T.C.A. § 7-35-101, T.C.A. § 7-52-105, T.C.A. § 29-16-102, T.C.A. § 29-17-201).

### ***Service Beyond Corporate Boundaries***

Any city is empowered to extend “any utility service, specifically including waterworks, water plants, water distribution systems, and sewage collection and treatment systems” beyond its corporate boundaries, providing that proper charges are established “so that any such outside service be self-supporting.” However, no city or other utility agency may “extend its services into sections of roads or streets already occupied by other public agencies rendering the same service so long as such other public agency continues to render such service” (T.C.A. § 7-51-401).

### ***Metering Errors; Statute of Limitations***

When a customer is overcharged or undercharged for electric, water, sewer, or gas services because of equipment malfunction, and the customer was unaware of the discrepancy, a municipality may not recover the undercharge or reimburse the overcharge for the period before 36 months from the date the error was discovered (T.C.A. § 28-3-301–303).

### ***Utility Deposits***

Unclaimed utility deposits and unclaimed utility refunds fall under the state’s Abandoned Property Law, which imposes record keeping and reporting requirements on a utility. The utility must attempt to notify the subscriber within 120 days of the commencement of the two-year waiting period before the deposit is presumed abandoned (T.C.A. § 66-29-106). The city may reclaim unclaimed utility deposits and monies from other abandoned property reported by the city under circumstances outlined in the Abandoned Property Law.

### ***Theft of Utility Service and Damage to Equipment***

It is unlawful to divert utility service or damage utility equipment. When a utility catches a customer stealing utility service, it has a right to collect three times the value of the stolen service and attorney’s fees and costs. The city also may collect for theft of or

damage to equipment, theft of meters, etc., by taking civil action to recover those losses and file liens against the property served to enforce the collection. To make the liens valid if the property is sold, the utility must follow procedures prescribed in T.C.A. §§ 65-35-101 *et seq.*

A violation of T.C.A. § 65-35-102 also is a violation of T.C.A. § 39-14-104 (theft of services) (T.C.A. § 65-35-105). T.C.A. § 39-14-411 prohibits damage to or interference with utility lines, fixtures, and appliances. The civil remedies and criminal penalties imposed by the criminal statutes are mutually exclusive (T.C.A. § 65-35-106).

### **Records**

For information on utility records that are confidential and not subject to public disclosure, see Chapter 5, “Sunshine Law and Public Documents.”

### **Underground Utility Damage Prevention**

The Underground Utility Damage Prevention Act of 1978 prescribes a procedure for recording underground facilities (communications, electricity, gas, petroleum, hazardous liquids, water, steam, and sewerage) with each county’s register of deeds and giving notification of intended excavation or demolition. The act applies to state and local governments.

Before digging on public property, public rights of way, or private easements, the digger must give no fewer than three and no more than 10 days of advance notice to any entity that has filed a record with the register of deeds.

To help manage this notification process, the state’s utilities joined to create Tennessee One Call. The digger can meet notification requirements by making a single telephone call (800-351-1111), and the One Call service notifies utilities with underground facilities in the area. Municipalities are encouraged to join and participate in the Tennessee One Call organization for which there is no charge. However, if the digger complies with the act, it prohibits utilities that suffer damage resulting from not joining the One Call service from recovering damages from the excavation.

A violation of this act by a digger is a Class A misdemeanor punishable by a \$2,500 fine or 48 hours in jail (T.C.A. §§ 65-31-101 *et seq.*).

## **Additional Water and Sewer System Provisions**

### **State Oversight**

Public water supplies and sanitary sewerage systems are subject to supervision by the state Department of Environment and Conservation. Such supervision includes approving construction plans, examining water samples, and enforcing regulations regarding operating and maintaining such systems. State approval of construction or other changes to the public water supply and sewage systems is not required if the

state has certified that local approval under local standards is sufficient to safeguard the public health (T.C.A. § 68-221-101–108).

### ***Financial Oversight***

The financial condition of municipal water and sewer systems is monitored by the Water and Wastewater Financing Board of the state Department of Environment and Conservation. Board members, appointed by the governor, hear cases referred to them by the comptroller's office. Generally, water or sewer systems that have defaulted on a debt, have three consecutive years of operating deficit, or have retained earnings deficits in any one year will be referred to the board. However, in determining whether to file a report with the board, the comptroller is not to consider depreciation expenses if the water or wastewater system has a total equity at least four times greater than total debt. Several other exceptions apply. The board has broad powers to effect the adoption of user rates, issue subpoenas, and so forth (T.C.A. § 68-221-1008–1010).

### ***Plant Operator Certification***

The Water Environmental Health Act makes it unlawful to operate a water supply system, wastewater system, water treatment plant, wastewater treatment plant, water distribution system, or wastewater collection system unless the operators in direct charge have been certified as competent by the commissioner of Environment and Conservation. A five-member board established by the act is charged with adopting rules and regulations to govern the program, and the commissioner issues certificates.

All operators are encouraged to be certified, but certification is required of only one operator in charge of each system or plant. One operator may supervise two or more nearby systems when his or her work time can reasonably be so divided. Annual renewal of certificates is predicated on payment of fees and meeting any continuing education and/or experience requirements established by the board. A procedure is provided for revoking a certificate. Each day in violation subjects a city or other responsible agency to a Class C misdemeanor and a civil penalty of up to \$10,000 (T.C.A. § 68-221-901–915).

### ***Minimum Sewer Use Rates***

To qualify minimum base rate charges paid by all sewer users as deductible items against an individual's federal income tax, a 1977 act declared such charges a tax. However, the Internal Revenue Service ruled that this tax did not change the charges' status as user fees, and they are not deductible (T.C.A. § 7-35-414).

### ***Safe Drinking Water***

Water pipes and solder used in water systems and plumbing must be lead free. Each water supplier must identify and notify all persons whose drinking water may be contaminated with lead (T.C.A. § 68-221-720).

### ***Water Withdrawals***

The Tennessee Water Resources Information Act (T.C.A. §§ 69-8-301 *et seq.*) requires people, including local governments, that withdraw or propose to withdraw 10,000 or more gallons of water daily from surface or groundwater sources to register the withdrawal annually with the Department of Environment and Conservation. This does not apply to emergency or agricultural withdrawals.

### ***Noncompliance with Drinking Water Regulations***

Public water systems that are not in compliance with current primary drinking water regulations must notify the state Division of Water Supply within 24 hours of discovery and provide public notice (T.C.A. § 68-221-708).

### ***Untrue Statements About Water***

Firms selling domestic water-softening or filtration devices sometimes attempt to boost their sales by advertisements questioning the safety or quality of public water supplies. It is unlawful to make certain untrue representations connected with selling, leasing, renting, etc., water treatment devices (T.C.A. § 47-18-1201–1203).

### ***Watershed Districts***

Watershed districts have broad powers. They are authorized to conserve soil and water resources, contract for constructing public works projects, acquire land, promote and protect public health, take fire-prevention steps, acquire water rights, distribute or sell water for irrigation or other purposes, provide recreational facilities, etc. The exercise of eminent domain by watershed districts requires approval of the local government in which the property in question is located (T.C.A. §§ 69-7-101 *et seq.*).

### ***Mandatory Tap-on***

Any city that has issued bonds secured by sewer revenues is empowered to require connection to an available sewer and, after a 30-day notice, discontinue water service to compel compliance (T.C.A. § 7-35-201, T.C.A. § 68-221-209).

### ***Energy Acquisition Corporation Authority Relative to Water Meters***

An energy acquisition corporation may install, read, maintain, and remove water meters for any municipality (T.C.A. § 7-39-302(17)).

### ***Cross-Connections Prohibited***

Public water systems must implement an effective program to eliminate or control cross-connection hazards. A cross-connection could permit unsafe or questionable water or other substances to flow backward into the water supply lines (T.C.A. § 68-221-711 (6)).

### ***Sewer Lateral Maintenance***

To control sewer inflow and seepage, cities may require the owner, tenant, or occupant of each land parcel to properly maintain the portion of a sewer connection located on the private property. Cities may cut off water service if the customer fails to make repairs after being notified to do so (T.C.A. § 7-35-201(2), T.C.A. § 68-221-209).



### ***Pre-treatment Programs***

Federal EPA regulations require municipal sewage treatment plant operators to establish programs requiring businesses and industries discharging into the city sewers to pretreat their effluent to meet the sewer plant's treatment standards. The state code gives cities authority to administer pretreatment programs and assess civil penalties of up to \$10,000 per day for violations (T.C.A. §§ 69-3-101 *et seq.*).

### ***Loan Programs***

The state is authorized to make repayable grants to municipalities for constructing sewage treatment works based on the unobligated amount of the municipality's annual state-shared taxes (T.C.A. § 68-221-202).

T.C.A. §§ 68-221-1001 *et seq.* created a self-sustaining, low-interest, revolving loan program for wastewater facility construction. The program is administered by the Department of Environment and Conservation's Division of Community Assistance and the Tennessee Local Development Authority. (See Chapter 8, "Capital Funds.")

### ***Combined Billings***

A city that has both a sewer system and a water system is authorized to combine water and sewer bills (if the contractual obligations of water revenue bonds are not impaired) and to enforce the payment of both charges as a unit, including discontinuance of water service (T.C.A. § 7-35-201(3)).

### ***Bonds for Self-contained Wastewater Systems***

The Tennessee Regulatory Authority must require the posting of a bond or other security for a public utility providing wastewater service or for a particular project by such a utility. The purpose of the bond is to ensure the proper operation of the utility or project. The TRA establishes the amount of the bond (T.C.A. § 65-4-201).

## **Additional Provisions for Electric, Gas, and Other Fuel Systems**

### ***Energy Production and Landfill Methane***

Any municipality is empowered "to construct, own, operate, or maintain — within its corporate limits or within the limits of the county wherein it is located — an existing or planned energy production facility or facilities," including acquiring easements or other appurtenances for transporting or transmitting energy. Such a facility may use "fossil or other fuels" or solid waste. Creating a monopoly by ordinance is specifically authorized, provided the ordinance is first reviewed and approved by the state Department of Environment and Conservation. Annual reports about the monopoly must be made to and reviewed by this department (T.C.A. §§ 7-54-101 *et seq.*).

The Landfill Methane Development Act allows any municipality to construct and operate a facility for the preparation of landfill methane for transportation and as a substitute for

natural gas (T.C.A. §§ 65-28-201, *et seq.*).

### ***Averaging Bills***

Any utility providing electricity, natural gas, or other fuel to more than 15,000 residential customers must permit bill payment on a monthly averaging basis. Every customer has the option to use such a plan (T.C.A. § 65-33-101–106).

### ***Utility Relocation for Highway Construction***

Under the common law, utilities using municipal streets may be required to remove or relocate those utilities from those streets at their own expense. With respect to state highways, however, T.C.A. § 54-5-804 authorizes the Department of Transportation, subject to funding, to reimburse public and private utilities the full costs of relocating caused by state road projects.

To qualify, the utility must

- Comply with 54-5-854(b), including preparing and submitting to the department the utility's relocation plan, its cost estimate, and schedule for completing the relocation within specified allowed times.
- Enter into a written agreement with the commissioner to include the relocation costs as a part of the department's highway construction contract, OR, enter an agreement that the utility will remove all facilities that the department wants moved before the department lets the construction contract. The utility will be reimbursed for the cost of the relocation work it has undertaken if the department does not undertake the project within a specified time.

The utility will be responsible for inspecting all phases of the relocation to ensure compliance with all specifications and safety codes.

The department will make no reimbursement until the commissioner is satisfied that the relocation has been performed in accordance with plans and the schedule of calendar days approved by the department.

This section requires the utility to reimburse the department to the extent the department is not compensated from federal funds for the relocation costs.

The utility management review board administers a state-funded loan program to help local governments and certain nonprofit businesses relocate utilities in the path of highway construction projects. Such loans are provided for up to 15 years and are interest free for the first five years. The utility management review board requires the borrowing utility to establish user fees sufficient to repay the loan and interest (T.C.A. § 7-82-701, T.C.A. § 67-3-617(j)(1)).

Utilities that are relocating because of a state highway project must make monthly progress reports to the Tennessee Department of Transportation (TDOT) and other utility owners. Reports made at preconstruction meetings between the contractor and

TDOT will be sufficient to meet this requirement even if the meetings are not held monthly (T.C.A. § 54-5-854).

### ***Creating and Expanding Utility Districts***

Most utility districts created under T.C.A. §§ 7-82-101 *et seq.* provide water and sometimes sewer service. However, they may be empowered to provide natural gas, bottled gas, police, fire, garbage, street lighting, park, transit, chemical pipeline, and cable TV services.

State law establishes procedures for creating or expanding a utility district. At least 10 days prior to a hearing on a petition to create a utility district, the county executive must send by registered mail a notice of the hearing to the mayor or other chief executive officer of any city that has a boundary within five miles of the proposed district's boundary if the city has a population of more than 5,000 or within three miles if it has a population of less than 5,000. The notice also must be sent if any city, regardless of size, has "any water, sewerage, or gas service facility" within three miles of the proposed district's boundary. At the hearing, the city may make known its intention of serving the area, whereupon the county executive must give the city 60 days to file its specific plans for doing so. When such plans are filed, the county executive must determine a reasonable time (which he or she may later extend) for the city to provide such service, a decision that may be appealed by either party to Circuit Court. The utility district may then be created minus the area to be served by the city or without authority to duplicate the city's service.

A similar procedure is provided for extending service facilities by existing utility districts, with priority given to a city within the same mileage limitations as above. The county executive likewise determines a reasonable time for the city to provide the service, which is subject to appeal.

The statute also provides a procedure for consolidating two or more utility districts.

### ***Acquisition of Utility District by Municipality***

T.C.A. § 7-82-202(f) provides a means for a municipality to acquire a utility district. The acquisition must be preceded by a petition of the governing body of the utility district, following which the county executive handles the petition in the same manner as a petition for the creation of a utility district is handled. If the county executive determines that the municipal acquisition of the utility district serves the public convenience and necessity, the utility district is dissolved and all its property is transferred to the municipality. The former utility district must be operated by the municipal governing body, separately from any other municipal utility. If the area served by the former utility district is outside the limits of the municipality, the municipal governing body must, by ordinance, appoint an advisory committee consisting of either the former commissioners or residents and customers of the utility district.

Although this statute provides that the former utility district must be operated by the

municipality as a separate department, it also provides that “When the former utility district ceases to be a separate department and is merged with the other utility services of the municipality into one utility system, such advisory committee may be dissolved. No portion of such utility district shall be made a part of the municipal utility service without consideration being paid to the department composed of such utility district.” It is not clear how the internal conflict in the statute would be resolved.

### ***Expansion of Cities into Utility District and Electric Cooperative Service Areas***

Things become more complicated when a city is expanding as it must contend with both state and federal restrictions. The state code says a city may not extend its utility service within the boundaries of a utility district “... unless and until it shall have been established that the public convenience and necessity requires other or additional services ...” (T.C.A. § 7-82-301). Apparently, any additional service by either public or private providers is required to be supported by a certificate of convenience and necessity issued by the county mayor. [See *West Wilson Utility District of Wilson County v. Atkins*, 442 S.W.2d 612 (Tenn. 1969); *Consolidated Grey-Fordtown-Colonial Heights Utility District v. O’Neill*, 354 S.W.2d 63 (Tenn. 1962); *Pace v. Garbage Disposal District of Washington County*, 390 S.W.2d 461 (Tenn. App. 1965); *Chandler Investment Co. v. Whitehaven Utility District*, 311 S.W.2d 603 (Tenn. App. 1958)].

When a city annexes part of a district’s territory, the state code gives the city power to take over the utility district’s facilities in the annexed area upon payment of an agreed amount of compensation and under agreed terms, or as determined by arbitration. If so much of a utility district is annexed that operating the remainder outside the city is economically unfeasible, a city probably would have to choose between taking all of the district or none of it (T.C.A. § 6-51-111).

However, 7 U.S.C. § 1926(b) and court decisions interpreting this federal statute limit this state grant of power. Almost all utility districts built rural water lines funded with Farmers Home Administration (FmHA) loans. 7 U.S.C. § 1926(b) has provisions protecting the borrowing district’s ability to pay those loans back to FmHA. Courts have interpreted these provisions to give a district an absolute ability to refuse to transfer utility service rights to a municipality that annexes part or all of its service area.

A city incorporated after January 1, 1972, must hold a referendum before it can take over utility service from a utility district (T.C.A. § 6-51-301).

The taking of facilities owned by an electric cooperative is subject to special rules regarding compensation of the co-op (T.C.A. § 6-51-112). A utility district may act jointly in carrying out its powers with a county, city, or other utility district and may contract jointly with the state or federal government or any agency thereof (T.C.A. § 7-82-304(11)).

### ***Utility Management Review Board***

A utility management review board, appointed by the governor, advises utility district

boards of commissioners on utility management. Financially distressed utilities are reported to the board by the comptroller's office. The board has broad powers to adopt rates, study consolidating utility districts, hear customer complaints, and review and comment on the creation and modification of utility districts' boundaries (T.C.A. § 7-82-201–202, T.C.A. § 7-82-701–804).

### ***Oil and Gas Exploration***

Municipalities are authorized to undertake oil and gas ventures. Cities may prospect, drill, mine, produce, treat, and transport natural gas, oil, and mineral byproducts (T.C.A. § 6-54-110).

## Franchises

### ***Private Utilities Franchise***

Privately owned and operated utilities are subject to regulation by the Tennessee Regulatory Authority. A franchise granted by a city to such a utility must first be approved by the authority. The authority may hear appeals on regulatory measures imposed by cities. The authority may not issue a certificate of convenience and necessity to a second company for service in the same area unless it first determines that existing services are inadequate. A city may declare by ordinance that public necessity requires a competing utility (T.C.A. § 65-4-107, T.C.A. § 65-4-108, T.C.A. §§ 65-4-201 *et seq.*).

### ***Consent to Transfer of Franchise***

No public utility may acquire the franchises or property of another utility company serving a city without the city's "permission and consent, expressed officially in writing ... and then only upon such terms and conditions as the said municipal government may prescribe" (T.C.A. § 6-54-109).

### ***Power Lines and Pipelines in Rights of Way***

Electricity, gas, and oil suppliers are authorized to place lines, wires, and pipes as needed along city streets, lanes, and alleys "after having first obtained permission from the governing authorities thereof" (commonly referred to as a "franchise"). Excavations must be made "in such manner as to give the least inconvenience to the public, and shall be replaced with all possible speed by and at the expense of the corporation in as substantial manner as found before being excavated" (T.C.A. § 65-22-103).

### ***Telephone Lines***

T.C.A. § 65-21-101 provides phone companies the following privileges: telegraph and telephone corporations may construct a telegraph or telephone line and erect the necessary fixtures along, over, or under the line of any public highway or the streets of any town or city; across, over, or under rivers or any land belonging to the state; or along, across, or under county roads and also the lands of private individuals. This may be done under the general law authorizing condemnation of right-of-way easements for

works of internal improvement, as set forth in T.C.A. § Title 29, Chapter 16, but the ordinary use of these public highways, streets, or county roads may not be obstructed or the navigation of waters impeded.

T.C.A. § 65-21-103 gives municipalities the following powers regarding phone companies: “While any village or city within which said line may be constructed shall have all reasonable police powers to regulate the construction, maintenance, or operation of said line within its limits ... yet no village, town, or city shall have the right to prevent said company from constructing, maintaining, and operating said line within said village, town, or city, so long as said line is being constructed, maintained, or operated within said village, town, or city, in accordance with said reasonable police regulations.”

### ***Authority to Offer Telecommunications, Video, Internet, and Like Services***

A municipal electric system is permitted to provide telephone, telegraph, and telecommunications services; dedicate a reasonable portion of the electric plant to telecommunications services; and lend funds to provide for working capital. The funds must be lent at not less than the highest rate then earned by the municipality on invested electric plant funds (T.C.A. §§ 7-52-401 *et seq.*).

The system must make tax equivalent payments relative to telecommunications services the same as for electrical services. In addition, the municipal system may not provide telecommunications services in the area of an existing phone cooperative with fewer than 100,000 lines and is subject to regulation by the Tennessee Regulatory Authority (T.C.A. §§ 7-52-401 *et seq.*).

An amendment to the law now allows electric systems to provide cable TV, two-way video transmission, Internet services, and other like systems. Municipalities may not do this in areas where a private cable provider serves 6,000 or fewer customers and must file a business plan with the comptroller’s office prior to beginning operation (T.C.A. § 7-52-601).

Under certain conditions, a municipality may enter into joint ventures to provide telecommunications and cable TV services (T.C.A. § 7-52-103(c)-(d)). (See Chapter 7, “Municipal Revenues.”)

### ***Energy Acquisition Corporations***

The Energy Acquisition Corporation Act, contained in T.C.A. §§ 7-39-101 *et seq.*, authorizes municipalities to establish Energy Acquisition Corporations. These corporations have extraordinarily broad powers to acquire and operate gas- and electricity-producing properties under various arrangements prescribed by the act, including the power to issue bonds for those purposes. Municipalities are authorized to lend money to and enter into other financial arrangements with such corporations. The structure and powers of Energy Acquisition Corporations are prescribed in the act.

T.C.A. § 7-39-302(a)(12) requires engineering services provided by an energy

acquisition corporation to be in compliance with T.C.A. § Title 62, Chapter 2.

***Electrical Safety Code for Supply Stations***

T.C.A. § 68-101-104 adopts the August 1, 1996, edition of the American National Standard Safety Code (for supply stations and lines, overhead and underground electric-supply and communications lines, and work rules governing their construction and operation.)

## Chapter Seventeen

# Public Safety

### Notice of Prohibition of Weapons in Public and Private Places

T.C.A. § 39-17-1359 authorizes individuals, corporations, business entities, and local, state, and federal government entities to prohibit the possession of weapons by persons otherwise authorized to carry them under state law, at meetings conducted by or on property owned, operated or managed by or under the control of such persons and entities. Notices of this prohibition must be displayed in prominent places, including all entrances used primarily by persons entering the building, portion of the building, or buildings where the prohibition applies. If the prohibition applies to the premises of any such property as well as to the confines of buildings located on such property, the notices must be posted at all entrances to the premises that are used primarily by persons entering the property. The notice

- Must be of a size plainly visible to the average person entering the building or premises;
- May include the international circle and slash symbolizing the prohibition of the item within the circle;
- Must be in English; and
- May be in other languages used by patrons, customers or persons who frequent the building or premises.

The text of the notice must contain language similar to the following:

*Pursuant to T.C.A. § 39-17-1359, the owner/operator of this property has banned weapons on this property or within this building or this portion of this building. Failure to comply with this prohibition is punishable as a criminal act under state law and may subject the violator to a fine of no more than \$500.*

Signs posted by local governments that substantially comply with this notice may continue to be used.

It is a Class A misdemeanor for a person other than an on-duty law enforcement officer, military employee, correctional officer, or the owner or employee of the owner to possess a firearm where beer or intoxicating liquor are served for on-premises consumption (T.C.A. § 39-17-1305).

### 911 Emergency Communications District

T.C.A. §§ 7-86-101 *et seq.* authorize a city's or county's governing body to request by resolution that the county election commission hold a referendum within all or part of the boundaries of the municipality or county to establish a 911 emergency telephone system. If a majority votes in favor of such action, the governing body is to appoint seven to nine board members to govern the district's affairs. The district is designated a



“municipality or public corporation in perpetuity under its corporate name,” but it does not have the power to levy taxes. A board member may not be a district employee.

To fund the 911 system, the board is empowered to “levy an emergency telephone service charge in an amount not to exceed 65 cents per month for residential users and \$2 per month for business users.” Additionally, the local 911 system receives a portion of the revenues generated by the charge on wireless phones in accordance with a formula contained in T.C.A. § 7-86-303. The board may call for a referendum on increasing the emergency telephone service charge to not more than \$1.50 per month for residential users and \$3 per month for business users (T.C.A. § 7-86-108(a)). Unless such an increase is approved in a referendum, there must be notice and a hearing of the governing body that created the district before an increase may be made. The board also is authorized to receive funds from federal, state, and local governments; private sources; and issuance of bonds. Annual district audits that comply with the comptroller’s standards are required (T.C.A. § 7-86-101–117). The governing body of the county or municipality that created the district may also lower the emergency telephone service charge levied by the district’s board of directors. The governing body’s ordinance or resolution, which must pass by a two-thirds vote, may not lower the levy below the amount needed to fund the district’s operations. The decreased levy remains in effect until rescinded by a majority vote of the governing body (T.C.A. § 7-86-108).

These comprehensive fiscal management requirements apply to

- Copies of the district’s annual audit must be provided to the legislative body and chief executive officer of the city or county (T.C.A. § 7-86-113);
- Copies of the district’s annual budget must be provided to the municipal legislative body and the city’s chief executive officer both before and after passage, and the budget must include a schedule of salaries (T.C.A. § 7-86-120); and
- Officers and employees of an emergency communications district who receive public funds must be bonded, and the premium must be based on revenue and paid by the district (T.C.A. § 7-86-119).

If the system is funded by general funds, a municipality may create and operate a 911 emergency system without a referendum (T.C.A. § 7-86-151).

The municipal governing body may serve as the board of directors of an emergency communications district created after July 1, 2002.

Counties and cities may delegate to emergency communications districts the authority to establish and enforce policies for assigning and posting property numbers (T.C.A. § 7-86-127).

Emergency communications district board members are granted complete tort immunity except in cases of gross negligence (T.C.A. § 29-20-108).

T.C.A. §§ 7-86-301 *et seq.* created a statewide Emergency Communications Board of nine members under the Department of Commerce and Insurance. This board's approval is required for the establishment of any new E-911 district within an existing E-911 district. It has the power to compel the merger or takeover of financially distressed E-911 districts, order referenda for the creation of countywide E-911 districts where no such district was created by January 1, 2000, and set technical operating standards. E-911 districts are required to use uniform financial standards adopted by the comptroller. The board is financed by a fee of up to \$3 per month on commercial mobile phone use.

T.C.A. § 7-86-108(f) allows the state Emergency Communications Board to withhold emergency communications funds from local districts if the district is operating in violation of state law or is not taking sufficient action to provide wireless 911 service.

### ***Qualifications for Emergency Dispatchers***

With certain narrow exceptions, all public safety dispatchers who receive requests for or dispatch emergency aid by telephone, radio, or other telecommunications devices must meet certain qualifying and educational requirements. Each dispatcher or call taker who receives initial or transferred 911 calls must successfully complete a training course approved by the state Emergency Communications Board by July 1, 2006. Persons employed after that date have six months to complete the course (T.C.A. § 7-86-205).

### ***Mutual Aid and Fire Protection Outside Cities***

Mutual aid contracts are authorized under the Interlocal Cooperation Act (T.C.A. §§ 12-9-101 *et seq.*). This act allows counties and cities to act jointly to provide services that each may provide separately, including fire service and law enforcement. (See also T.C.A. § 6-54-307, T.C.A. § 6-54-601–603.)

An incorporated municipality is authorized to enter into mutual aid or fire protection assistance contracts with other cities, counties, private incorporated and industrial fire departments, utility districts that provide fire protection, metropolitan airport authorities that provide firefighting service, or “an organization of residents and property owners of unincorporated communities.” A city may enter into individual contracts with non-city residents or provide the service without a contract. In either event, both the city's and county's legislative bodies must approve the arrangement (T.C.A. § 6-54-601–603).

The Mutual Aid and Emergency and Disaster Assistance Agreement Act (MAEDAAA) of 2004 (T.C.A. §§ 58-8-101 *et seq.*), authorizes municipalities to assist other governmental entities in certain occurrences and emergencies when the requesting and responding parties do not have a mutual aid agreement. This law acts as a statewide mutual aid agreement for participating entities and provides for reimbursement as required in the federal policy noted below.

Federal policy, specifically Response and Recovery Policy Number 9523.6 of the Federal Emergency Management Agency, appears to require municipalities, in their mutual aid agreements, to require cost reimbursement by the entity receiving assistance

in all instances if the municipality is to be reimbursed for aid in a presidentially declared disaster. Municipalities and entities acting under the MAEDAAA of 2004 in a state of emergency are required to reimburse responding parties, or to be reimbursed if they are a responding party, in accordance with this federal policy.

## Fire Protection

### ***State Recognition and Local Approval Required***

T.C.A. §§ 68-102-301, *et seq.*, require state recognition before a firefighting organization may operate or raise funds as a fire department. The state fire marshal enforces this law and sets standards and qualifications for becoming and remaining a fire department. Certificates of recognition are valid for three years, after which the fire department must apply for a renewal. T.C.A. § 68-102-306 provides that no new fire department may be created or recognized without the approval of the local governing body.

### ***Volunteer Fire Departments***

An 1831 law authorizing “private fire companies” to be formed by “any number of persons resident within a municipality” can be used to create a volunteer fire department (T.C.A. § 7-38-101–104). An interesting (but probably invalid) provision states that members of such private fire companies and members of departments in incorporated cities and towns are exempted from “military duty in time of peace and from serving on juries” (T.C.A. § 7-38-104).

### ***Hazardous Material and Natural Disaster Calls Outside the City***

Cities incorporated under the general law city manager-commissioner charter (T.C.A. §§ 6-18-101 *et seq.*) may allow their fire departments to answer hazardous materials and natural disaster calls, regardless of where the emergency exists (T.C.A. § 6-21-703).

### ***Investigating Fires; Demolishing Buildings***

A fire chief, fire marshal, or mayor of a city without a fire department shall be designated an assistant to the commissioner of Insurance to investigate fires, and a report of each investigation is required on prescribed forms. Such an assistant may order the demolition and removal of irreparable structures at the expense of those responsible for them. In cities with no fire marshal, a fire marshal from another local government may be an assistant to the state commissioner on behalf of that city.

Any officer authorized to conduct fire inspections may order any building removed or repaired that the officer finds is a fire hazard or otherwise inherently dangerous to the public. This finding may be made if

- Repairs are lacking;
- Fire escapes, alarms, or fire extinguishing equipment are insufficient; or
- Any other dangerous or defective condition renders the property prone to fire (T.C.A. §§ 68-102-101 *et seq.*).

### ***Firefighters Training and Certification***

T.C.A. §§ 4-24-101 *et seq.* establish a commission on firefighting personnel standards and education under the Department of Commerce and Insurance. Comprising nine members appointed by the governor (the commissioner of Education is a nonvoting, ex officio member), the commission makes recommendations to the governor and General Assembly on municipal firefighting issues and

- Certifies fire training instructors;
- Certifies training and education programs prescribed by the commission;
- Recommends and approves curricula for advanced courses and seminars in fire science, fire engineering, and training in institutions of higher learning or other state-supported schools;
- Establishes classifications based on training and education for full-time or volunteer firefighters who pass the certification examination given by the commission; and
- Administers the supplemental income bonus provided for in the statute.

Various provisions of the statute elaborate on the commission's powers in the above areas.

Generally, municipal firefighters who successfully complete 40 hours of in-service training (appropriate to their rank and the size and location of their fire departments) are eligible for an educational incentive of up to five percent of their annual salaries. T.C.A. § 4-24-202(c) requires that firefighters serving in the military receive their incentives if the military service prevented them from attending in-service training. Drivers of emergency vehicles must also receive two hours training each year in the operation of the emergency vehicle. The driver must also pass a comprehensive examination (T.C.A. § 55-8-194).

### ***Regulating Fire Extinguisher Firms***

Regulating fire extinguisher firms is exclusively a state function. However, a municipality may require permits for installing fire extinguisher systems. A municipality also may require those systems to conform to applicable building codes and requirements (T.C.A. §§ 62-32-201 *et seq.*)

### ***Ambulance Service***

A city or county may provide ambulance service as a governmental activity or may regulate such service provided by private operators or nonprofit, general-welfare corporations. No county may provide, license, franchise, or contract for ambulance service within a city or in another county without approval from the city's governing body, and the same restriction applies to cities (T.C.A. § 7-61-101–104). State regulation of emergency medical service agencies and licensing of emergency medical technicians (EMTs) is provided in the Emergency Medical Services Act of 1983 (T.C.A. §§ 68-140-501 *et seq.*). An EMT, physician, or nurse is required to attend every patient transported by an ambulance in Tennessee (T.C.A. § 68-140-159).

## Police Operations

### ***Police Authority Outside City***

A city's police authority is extended one mile beyond its boundaries but not beyond the county's limits and not within one mile of any other city's boundary "for the suppression of all disorderly acts and practices forbidden by the general laws of the state" (T.C.A. § 6-54-301). Mutual aid contracts may be made with another city, with a metropolitan airport authority that provides law enforcement service, with the county, or with organizations of residents and property owners in unincorporated communities providing law enforcement assistance (T.C.A. § 6-54-307).

The Interlocal Cooperation Act allows contracts between cities and counties for police services (T.C.A. §§ 12-9-101 *et seq.*).

### ***Service of Warrants and Process***

Arrest warrants for people charged with municipal offenses committed within a city may be served by a city police officer at any point in the county in which the city is located (T.C.A. § 6-54-302).

A city with a population of more than 32,000 that has a city court may, by ordinance, permit "service of process" by registered or certified mail with return receipt requested in "an action of debt involving nonpayment of any ticket or citation issued for any nonmoving traffic violation" (T.C.A. § 6-54-305).

### ***Citation in Lieu of Arrest or Warrant***

Police officers who have observed an ordinance violation or, upon investigating, have reason to believe a city ordinance violation has occurred may issue a citation to appear for trial instead of making an arrest, provided the person cited signs an agreement to appear and waives a warrant issuance. If the person refuses to sign such an agreement, the usual procedure of arrest, booking, and release on bail (or commitment to jail) applies. This procedure does not apply to nonresidents of Tennessee or to a charge of driving while under the influence of intoxicants or drugs (T.C.A. § 7-63-101–107).

Another act mandates that an officer use similar procedures for any misdemeanor, but the act includes a list of situations in which the officer may use discretion and either issue a citation or detain the person. Another list describes situations in which citations should not be issued. When using this list, the police officer must write on each ticket the reason for not issuing a citation. This statute is somewhat detailed, and city police officials should study it carefully (T.C.A. § 40-7-118).

Officers are mandated to use citations instead of arrests for traffic violations not requiring the offender to appear before a magistrate or judge. This statute also sets out some exceptions and a detailed procedure and should be studied carefully by police

officers involved in traffic control (T.C.A. § 55-10-207).

### ***Criminal Warrants and Summonses***

T.C.A. § 40-6-205 and 215 establish procedures and requirements for the issuance of criminal arrest warrants and summonses.

### ***Citations in Lieu of Arrest for Health and Sanitation Violations***

In the areas of sanitation, litter control, and animal control, a city may, by ordinance or resolution, designate employees who have the power to issue ordinance summonses for violations of any ordinance, law, or regulation. Such an ordinance summons is to be treated as a citation in lieu of arrest. If the offender refuses to sign an agreement to appear in court, the employee may request the clerk of the court to issue a summons, or he or she may request a police officer to make an arrest or witness the violation and issue a citation in lieu of arrest, as provided in T.C.A. § 7-63-104. If the offender fails to appear in court after signing an ordinance summons agreement, the court shall issue a warrant (T.C.A. § 7-63-201–204).

### ***Minimum Standards for Police Officers***

T.C.A. § 38-8-101–106 establish the Tennessee Peace Officer Standards and Training Commission, assisted by the director and staff of the Tennessee Law Enforcement Training Academy. The commission is empowered to develop, plan, and implement training programs for all local law enforcement officers and to administer and enforce this law's provisions.

The following statutory minimum qualifications apply to any person who is employed as a full-time, part-time, temporary, reserve, or auxiliary police officer. The officer must

- Be at least 18 years old;
- Be a U.S. citizen;
- Have a high school or equivalent education;
- Not have a conviction or *nolo contendere* plea on any felony charge or law violation involving force, violence, theft, dishonesty, gambling, liquor, or controlled substances;
- Not have any discharge from the U.S. armed forces other than honorable;
- Have fingerprints on file at the Tennessee Bureau of Investigation;
- Pass a physical exam by a licensed physician;
- Have good moral character, as determined by a thorough investigation by the employing agency; and
- Be free of any apparent mental disorders, as certified by a qualified psychiatrist or psychologist, if the individual cannot perform the essential functions of the job because of the disorder, with or without a reasonable accommodation, or if the disorder results in the individual posing a significant risk to the health or safety of himself/herself or others that cannot be reduced or eliminated by reasonable accommodation. [Consent decree in United States of America v. State of Tennessee (Civil Action No. 1:98-1357, U.S. District Court for the Western District of Tennessee)].

Any person knowingly hiring or paying the salary of a person who fails to meet these qualifications is subject to a fine up to \$1,000. The commission is directed to establish criteria for exceptions to or waiver of these qualifications, based on a person's previous law enforcement experience and training. Waivers are prohibited for specified deficiencies. Appeals from denied waivers may be taken to the commissioner of safety.

The commission shall issue a certificate of compliance to any person who meets the qualifications for employment and satisfactorily completes an approved recruit training program. All officers employed after July 1, 1983, must successfully complete recruit training within one year of their date of employment and thereafter must successfully complete an annual in-service training session appropriate for their rank and responsibilities.

### ***Police Training and Salary Supplement***

Subject to annual state appropriations, officers who complete acceptable recruit training and at least 40 hours of annual training shall receive a salary supplement of five percent of their annual salaries but not more than \$600. This shall not diminish any salary increments paid by the local government (T.C.A. § 38-8-111). Training on limits of using deadly force and on using citations in lieu of arrest is required (T.C.A. § 38-8-112, T.C.A. § 40-7-108). T.C.A. § 38-8-111(a) requires that police officers serving in the military must receive their pay supplements if the military service prevented them from attending in-service training. Drivers of emergency vehicles must also receive two hours training each year in the operation of the emergency vehicle. Drivers must also pass a comprehensive examination (T.C.A. § 55-8-194).

A law enforcement officer employed by a judicial district drug task force is not entitled to the pay supplement for meeting the minimum certification requirements (T.C.A. § 8-7-110(a)).

By a two-thirds vote of the entire membership of its governing body, a municipality or county may establish an in-service training program for "certified correctional officers," which may include a cash supplement plan (T.C.A. § 38-8-111(d)).

### ***Auxiliary Officers***

Part-time, temporary, reserve, and auxiliary police officers must meet the same qualifications of age, education, citizenship, criminal record, and physical and mental fitness as full-time officers (T.C.A. § 38-8-106). They may work no more than 20 hours a week for a total of 100 hours per month (T.C.A. § 38-8-101(2)).

### ***Assistance from Law Enforcement Training Academy***

The director of the state Law Enforcement Training Academy is authorized "upon the request of the chief official of any law enforcement agency of ... a municipality ... to designate one or more of the commissioned instructors at the institute to assist such agency in its law enforcement role." An instructor so designated is supervised by the

agency's chief officials and receives no compensation other than that of an instructor (T.C.A. § 38-8-207).

### ***Suppression of Nuisances***

Offenses specifically designated "nuisances" by statute and several other general offenses, including lewdness, gambling, prostitution, selling or exhibiting obscene material, drunkenness, and breach of the peace, are subject to abatement in a chancery, circuit, or criminal court. The court may order any personal property, money, or stock used in connection with such activities to be sold at public auction, and the proceeds are to be shared equally by the state general fund and the general fund of the municipality whose officers made the seizure (T.C.A. § 29-3-101–111).

### ***Notification of Next of Kin in Event of Death or Serious Injury***

Police officers and other police employees are required to make a reasonable effort to notify the next of kin of any person killed or seriously injured in an accident before any statement disclosing the person's name is given to the press. The investigating officer shall make a determination whether a person is "seriously injured." Neither the officer nor officer's employer shall be liable for the officer's opinion as to whether a person is seriously injured (T.C.A. § 38-1-106).

### ***Domestic Violence***

Under certain circumstances, judges may place conditions on release or bail for people charged with domestic violence. The law enforcement agency having custody of the defendant must provide a copy of the conditions to the defendant upon his or her release. In addition, the law enforcement agency must

- Use all reasonable means to notify the victim; and
- Send to the victim's last known address or personally give to the victim a copy of any conditions of release. (Failure to furnish a copy of conditions shall not constitute negligence *per se*.)

An officer who has reason to believe that a person has violated the conditions of his or her release may make an arrest with or without a warrant (T.C.A. § 40-11-150).

A law enforcement officer's preferred response to domestic violence is to arrest the primary aggressor. The officer does not have to determine that a victim is not a primary aggressor. "Preferred response" means the officer must make the arrest unless there is a clear and compelling reason not to make the arrest. When a law enforcement officer believes that all parties are equally at fault, the officer must exercise discretion in determining whether to make any arrests. However, the officer must offer to transport the victim to a location where arrest warrants are issued and help the victim obtain an arrest warrant (T.C.A. §§ 36-3-601 *et seq.*).

Police officers must enforce orders of protection and may arrest for a violation with or without a warrant. An arrest must be made without a warrant if the officer has jurisdiction, if there are reasonable grounds to believe the order has been violated, and



if the officer has verified that an order is in effect (T.C.A. § 36-3-611).

T.C.A. § 10-7-504(a)(17) requires utilities — and allows municipalities — to keep confidential the telephone number, address, and other information about a domestic violence shelter or rape crisis center when the director requests such in writing.

All law enforcement agencies must have adopted a domestic violence policy by December 31, 1997. The agencies must provide for education on the handling and investigation of and response to domestic violence reports (T.C.A. § 38-12-106).

### ***Victims' Rights***

Article I, Section 35, of the Tennessee Constitution guarantees victims of crime certain rights. Among these are the right to be free of intimidation or harassment throughout the justice system and the right to be informed of their rights. T.C.A. § 40-38-111 and T.C.A. § 40-38-113 contain provisions affecting police conduct and implementing this constitutional amendment.

### ***D.A.R.E. Programs***

D.A.R.E. programs are authorized by the Drug Abuse Resistance Education Act of 1989. This joint program of the state Board of Education and the Department of Safety is taught in local schools by trained law enforcement officers. Local school systems may receive funds under the Drug-Free Tennessee program to implement D.A.R.E. programs (T.C.A. § 49-1-401–406).

### ***Details of Police Work***

State laws prescribe many details regarding what police officers can and cannot do. For example, highway patrol officers may stop vehicles for driver's license checks, but city police officers must have probable cause to believe an offense has been committed before they can check a license (T.C.A. § 40-7-103). Before using deadly force, a police officer, where feasible, must give notice of his or her identity as a police officer and give a warning that deadly force may be used (T.C.A. § 40-7-108). T.C.A. § 40-17-123 establishes detailed procedures police officers must use to subpoena documents and electronically stored data in gathering evidence in a criminal prosecution.

## **Seizure of Property**

### ***Seizure of Illegal Liquor***

City police officers have a duty to search for and capture illicit stills and associated paraphernalia. They also are required "to summarily destroy and render useless such property," and "all whiskey, beer, or other intoxicants" found at or near the site except beverages on which a federal tax has been paid. Such destruction must take place in the presence of "at least two credible witnesses." Within five days thereafter, the officer must file a written statement of all items destroyed with the circuit or criminal court clerk of the county where seized, and furnish a copy to the state Alcoholic Beverage

Commission (T.C.A. § 57-9-101). Any illegally held or transported intoxicating liquors on which a federal tax has been paid and that have been seized by a city police officer must be turned over to the sheriff within five days. After subsequent sale by the state, the proceeds minus 10 percent are to be remitted to the city (T.C.A. § 57-9-106, T.C.A. § 57-9-115).

#### ***Seizure of Vehicle for DUI***

A vehicle used in the commission of a person's second or subsequent DUI is subject to seizure and forfeiture. (Effective July 1, 2003, a blood alcohol concentration level of .08 percent while operating a vehicle constitutes DUI). A vehicle used in violation of the statute on driving with a suspended or revoked license due to a DUI conviction also is subject to seizure and forfeiture. Revenue from the sale of such vehicles remains with the local government responsible for the seizure to pay the reasonable and direct expenses of confiscation, towing, storage, and sale. Remaining revenue must be transmitted to the Department of Health by June 30 of each year (T.C.A. § 40-33-211).

#### ***Seizure of Vehicle for Arson***

Vehicles used in arson crimes also are subject to forfeiture (T.C.A. § 39-14-307).

#### ***Seizure of Vehicle for Promoting or Patronizing Prostitution***

The vehicle in which a second or subsequent offense of promoting or patronizing prostitution is committed is subject to seizure and forfeiture. A seizure may not be made before conviction. The violations must occur in Tennessee on or after July 1, 2002, and the second or subsequent offense must occur within five years of the prior offense (T.C.A. § 29-3-101).

#### ***Seizure of Property Used in Drug Offenses***

Property used to commit drug offenses, such as vehicles, aircraft, or boats, and property acquired with the proceeds of drug felonies may be taken through a civil procedure instituted by the district attorney or through an administrative procedure before the commissioner of Safety and sold at public auction. Sale proceeds are earmarked for the city's drug enforcement program and certain other law enforcement expenses. Any vehicle seized may be used in the local drug enforcement program for not more than five years (T.C.A. § 39-17-420, T.C.A. § 53-11-201–204).

#### ***Seized Conveyances Used in Robberies or Felony Thefts***

Sale proceeds from a vehicle, an aircraft, a vessel, or other conveyance forfeited because of use in a robbery or felony theft go to a city if the property was seized by its law enforcement personnel. The property must be used exclusively for law enforcement (T.C.A. § 40-33-110).

#### ***Seizure of Commercial Vehicles***

When seizing a commercial vehicle that the driver does not own, officers are required to make reasonable efforts to determine the name of the owner and to notify him or her of

the seizure. Rental cars are included in the protection afforded by this statute. Forfeiture of commercial vehicles is governed by special rules based on ownership of the vehicle (T.C.A. §§ 40-33-201 *et seq.*).

## Miscellaneous Provisions

### ***Sexual Offender Registration***

Certain sexual offenders are required to register within 48 hours of a change of status and are subject to monitoring. They must report periodically to update information in law enforcement files (T.C.A. §§ 40-39-201 *et seq.*).

The public has access to TBI records containing sexual offender information if the offenses were committed on or after July 1, 1997. The TBI must also place the information on the Internet (T.C.A. § 40-39-106).

### ***Public Drunkenness***

Municipalities may not enact ordinances prohibiting public drunkenness. This offense is now punished exclusively under state law (T.C.A. § 33-8-510).

### ***Reports to Police***

All hospitals, clinics, sanitariums, doctors, physicians, surgeons, nurses, pharmacists, undertakers, embalmers, or other persons called upon to tender aid are required to report to a police chief any person in or brought into a city who is “suffering from any wound or other injury inflicted by means of a knife, pistol, gun, or other deadly weapon, or by other means of violence, or suffering from the effects of poison or suffocation” (T.C.A. § 38-1-101).

### ***Gun Control Prohibited***

State law provides that “no city, county, or urban-county government shall occupy any part of the field of regulation of the transfer, ownership, possession, or transportation of firearms, ammunition, or components of firearms or combinations thereof.” However, this law does not affect the validity of any ordinance or resolution enacted before April 8, 1986. This section also prohibits municipalities from bringing lawsuits against gun manufacturers based upon the lawful design, manufacturing, marketing, and sale of handguns to the public (T.C.A. § 39-17-1314).

### ***Emergency Vehicle Lights***

All vehicles except law enforcement vehicles are prohibited from having flashing blue lights (T.C.A. § 55-9-414).

### ***Workhouse***

Any municipality is empowered to maintain a “workhouse or house of correction” (T.C.A. § 41-3-101).

### ***Enforcement of City Ordinances by Sheriffs***

Subject to an agreement among the municipality, the sheriff, the county's general sessions court, and the county's governing body, it is the sheriff's duty to enforce a city's ordinances if by ordinance the city declares this policy and furnishes certified copies of its ordinances to the sheriff and the county's general sessions court. Furthermore, the city must agree that it will pay enforcement costs not covered by court costs collected under its ordinances. "Civil penalties" are to be paid to the city, as distinguished from "court costs" (T.C.A. § 8-8-201(34), T.C.A. § 12-9-104, T.C.A. § 16-15-501(b)(1)).

### ***Charitable Solicitations***

Groups that solicit funds to benefit public safety personnel must register with the secretary of state as "charitable organizations" (T.C.A. § 48-101-501(1)). Volunteer fire departments, rescue squads, and local civil defense organizations are exempt from this requirement (T.C.A. § 48-101-502(a)(3)).

### ***Authority of Law Enforcement Officers to Carry Firearms***

T.C.A. § 39-17-1315 authorizes "any" law enforcement officer, police officer, county magistrate, retired police officer, and certain Tennessee Emergency Management Agency employees to carry handguns at all times, when authorized to do so by written directive of the chief law enforcement officer of the jurisdiction. A copy of the written directive must be retained by the issuing jurisdiction. This authorization also depends upon such officers completing and continuing to complete annually an eight-hour firearms training course. However, retired police officers are exempt from the firearms training requirement.

T.C.A. § 39-17-1350 authorizes law enforcement officers to carry firearms at all times and all places, while on or off duty, unless otherwise restricted by federal law, lawful orders of a court, or the "written directives" of the executive supervisor of the employing agency. A "law enforcement officer" for the purposes of this statute is "a person who is a full-time employee of the state in a position authorized by the laws of this state to carry a firearm and to make arrests for violations of some or all of the laws of this state, or a full-time police officer who has been certified by the peace officer standards and training commission." However, this law expressly does not extend to a law enforcement officer who

- Carries a firearm onto school grounds or in a school building unless the officer immediately notifies the principal or appropriate administrative staff;
- Is consuming or is under the influence of alcoholic beverages or a controlled substance;
- Is in a place where intoxicating liquor or beer is being sold for consumption on premises, and is not engaged in the discharge of his law enforcement duties; and
- Is not attending a judicial proceeding and is not engaged in the actual discharge of official duties as a law enforcement officer.

It is not clear whether the definition of “law enforcement officer” in T.C.A. § 39-17-1350 applies to T.C.A. § 39-17-1315.

### ***Reimbursement for Purchasing Breathalyzers***

With the approval of the Tennessee Bureau of Investigation, local governing bodies may purchase breath alcohol testing equipment under state contracts. Use of the instrument is to be reported to the court clerk. The clerk shall include an equipment service fee in court costs, which shall be remitted to the governing body as part of the court costs until the purchase price has been recovered (T.C.A. § 38-6-103).

### ***Fingerprinting***

Law enforcement agencies are required to make two full sets of fingerprints of each person arrested for an offense that results in incarceration or posting bond. (People issued citations are not considered arrested and do not have to be fingerprinted.) The two sets of prints must be sent to the TBI, which keeps one set and sends the other to the FBI (T.C.A. § 8-3-122, T.C.A. § 8-8-201(35)). When a person is arrested repeatedly for public intoxication, the officer must note that fingerprints are on file. Sanctions for failing to comply with the fingerprinting requirements apply only to fingerprints taken on or after July 1, 1999, and are imposed on the agency conducting the fingerprinting.

Prior to purchasing fingerprinting equipment, local departments are required to obtain certification from the TBI that the equipment is compatible with the TBI’s and the FBI’s automated fingerprint identification system (T.C.A. § 8-4-115, T.C.A. § 39-17-420).

### ***Drug Fines; Special Revenue Fund***

T.C.A. § 39-17-428 and T.C.A. § 53-11-452, respectively, entitle local governments responsible for arrests in drug-related cases to retain the proceeds of fines and of goods seized and forfeited in such cases. T.C.A. § 39-17-428(c)(1) requires that 50 percent of the fines received by the local government be paid into a special revenue fund; the other 50 percent is paid into the local government’s general fund.

With respect to the special revenue fund, the money may be used for drug enforcement, drug treatment and education, and certain nonrecurring drug program general law expenditures (generally capital outlays). In addition, “a portion of any fine collected pursuant to subsection (b) (the schedule of fines for certain drug-related offenses) may be expended to fund programs and services for infants and children who are afflicted by HIV or AIDS.” In the case of municipalities, the chief law enforcement officer and the mayor (or the county mayor in Moore and Trousdale counties) must recommend a budget for the fund, which budget must be approved by the municipal governing body. Different requirements apply to Metropolitan Nashville-Davidson County (T.C.A. § 39-17-420(a)(2)).

Cash transactions from the special revenue fund related to undercover operations must comply with procedures established by the comptroller. The law continues to require that purchases with drug fund money comply with all applicable purchasing laws.

Twenty percent of the funds must be set aside to pay for automated fingerprinting equipment until reaching the equipment's purchase price. Instead of buying the fingerprinting device, local governments may enter into agreements with other local governments to use their automated equipment. Additionally, local governments may continue to earmark up to 20 percent of drug fund revenues to offset the cost of dedicated phone lines, maintenance contracts, and support contracts for the automated fingerprinting instrument (T.C.A. § 39-17-420).

#### ***Execution of Certain Firearm Documents***

T.C.A. § 39-17-1361 requires the chief of police of the city of residence of a person purchasing any firearm as defined in 26 U.S.C. §§ 5845 *et seq.*, to execute within 15 business days of any request all documents required to be submitted by the purchaser if the purchaser is not prohibited from possessing firearms under T.C.A. § 39-17-1316.

#### ***Methamphetamine Precursors***

T.C.A. § 39-17-431 establishes several restrictions on the sale of methamphetamine precursors, such as limiting their sale only to licensed pharmacies and prohibiting the sale of more than three packages of the regulated products to the same person in a 30-day period. This section supersedes ordinances that were in effect on March 31, 2005.

#### ***Quarantine of Drug Sites***

T.C.A. §§ 68-212-501, *et seq.*, allow local law enforcement agencies to quarantine methamphetamine and other stimulant drug manufacturing sites until they are cleaned up and certified by an industrial hygienist as safe for humans. Within seven days of a quarantine order, the law enforcement agency must notify the Commissioner of the Department of Environment and Conservation of: the date of the order, county, address, name of the site owner, and a brief description of the site. The law enforcement agency must also file a notice of quarantine with the county register.

#### ***Charging Inmates for Services***

A municipality may charge an inmate in the municipal workhouse a co-pay for substance abuse treatment provided by the municipality (T.C.A. § 41-4-115(d)). The municipality may also charge a fee to inmates for participation in GED or other academic testing and for escorts to funeral homes and health care facilities upon the death or sickness of a family member. The governing body must authorize these fees by a two-thirds vote.

#### ***Drug Dealer Liability***

T.C.A. §§ 29-38-101, *et seq.*, establish procedures for municipalities and others to obtain damages that result from illegal drug use.

### Emergency Preparedness ***Civil Emergencies and Curfews***

Tennessee city officials have clear authority to respond to emergencies. The definition of “civil emergency” includes a “riot or unlawful assembly ... by three or more persons acting together without authority of law,” a severe “natural disaster or man-made calamity,” and one or more people destroying property or injuring others, causing “a threat to the peace of the general public or any segment thereof.”

A mayor or city manager (depending on the city’s charter) or other “chief administrative officer” may declare a civil emergency. The person must be specially designated by ordinance for purposes of this law. The declaration must be filed with the city clerk or recorder. After such a declaration, the chief administrative officer may establish general curfews for specified areas and hours “as he deems advisable [and] ... necessary” not to exceed 15 days. Certain personnel are exempted from the curfew. The chief administrative officer may order

- Closing all retail liquor stores;
- Closing all establishments where beer or alcoholic beverages are served;
- Closing all private clubs or portions thereof where consuming intoxicating liquor and/or beer is permitted;
- Discontinuing beer sales;
- Discontinuing selling, distributing, or giving away gasoline or other flammable liquid or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle;
- Closing gasoline stations and other establishments, the chief activity of which is selling, distributing, or dispensing flammable liquid or combustible products;
- Discontinuing selling, distributing, dispensing, or giving away any firearms or ammunition of any kind whatsoever; and
- Closing any or all establishments or portions thereof whose chief activity is selling, distributing, dispensing, or giving away firearms and/or ammunition.

The chief administrative officer also may issue such other orders necessary to protect life and property (T.C.A. § 38-9-101–106).

### ***Disasters, Emergencies, and Civil Defense***

T.C.A. § Title 58, Chapter 2, prescribes how man-made and natural civil emergencies (including energy emergencies) and disasters of virtually every kind are to be managed by the state and outlines the role of local governments in those areas. The statute gives the governor broad powers to respond to such emergencies, authorizes the governor to create the Tennessee Emergency Management Agency (TEMA), and designates TEMA as the state’s primary agency through which the governor’s civil emergency powers are exercised. TEMA is responsible for creating the Tennessee Emergency Management Plan (TEMP), which must “ensure that the state is prepared for emergencies and minor, major, and catastrophic disasters. ...” The TEMP must include, among other things, evacuation, shelter, and post-disaster response components. The TEMP must include the relationship between the state and local governments, which includes

- Guidelines and schedules for exercises that evaluate the ability of the state and its political subdivisions to respond to minor, major, and catastrophic

disasters. Generally, the formation of local emergency management plans is a county function. Municipalities are “authorized and encouraged to create municipal emergency management programs.” However, municipal emergency management programs must coordinate their activities to be consistent with the county emergency management plan and must comply with all standards, requirements, and regulations that apply to such county programs. Municipal requests for emergency response assistance must also be coordinated with the county;

- Determination of the requirements of the state and its political subdivisions for equipment and supplies of all kinds in the event of an emergency, and planning for their acquisition;
- Distribution of catalogs of federal, state, and private assistance programs to appropriate local government officials;
- Coordination of federal, state and local emergency activities, including partial or full mobilizations of emergency equipment and forces; and
- Implementation of training programs to improve the ability of state and local governments to prepare and implement emergency management plans and programs.

The governor, TEMA, and the governing bodies of the political subdivisions of the state establishing local emergency management agencies are directed to use the services, equipment, supplies and facilities of existing departments, offices, and agencies of the state or its political subdivisions to the maximum extent practicable. The officers of such entities are also directed to cooperate with and extend such services and facilities to the governor or to TEMA, and to the local emergency management agencies of the state upon request.

When there is an emergency beyond local control, the governor has the authority to declare a state of emergency or to issue a disaster declaration by executive order or activation of the TEMP. Such a declaration gives the governor broad emergency management powers, including the power to use all resources of the state and each of its subdivisions, including their personnel and other resources, and to give orders to state and local law enforcement agencies as may be reasonable and necessary. These political subdivisions and personnel are required to cooperate with the governor.

TEMA is authorized to provide support forces (mobile reserve) within and without the state. Such support forces, or mobile reserve, consist of personnel, equipment, and other resources of the state and of its political subdivisions. Employees of the state and of its political subdivisions in the support forces have the same powers, duties, rights, privileges, and immunities, and receive the same compensation that they receive in their respective positions. Their compensation is paid by the state or by its political subdivisions, whichever is applicable. Personnel in the support forces who are not employees of the state or of its political subdivisions are entitled to similar rights, privileges and immunities and to compensation fixed by TEMA. All personnel in the support forces are subject to the operational control of the authority in charge of



emergency management activities in the areas in which they are serving. They also are entitled to reimbursement for all actual and necessary travel and subsistence expenses to “the extent of the funds available.” It is not clear from what source those funds would come.

The political subdivisions of the state also have broad emergency management powers, including the power to

- Appropriate and expend funds and make contracts;
- Appoint, employ, remove, or provide, with or without compensation, coordinators, rescue teams, fire and police personnel, and other emergency management workers;
- Assign and make available for duty, within and without the political limits of the political subdivision, the offices and agencies of the political subdivisions, including employees, property and equipment, relating to all of the public safety, health, and utility services provided by most municipalities; and
- Request state assistance or invoke emergency-related mutual aid assistance by declaring a state of local emergency. The duration of such a local emergency is limited to seven days unless extended, as necessary, in seven-day increments. In such a case, the political subdivision also has the power to waive procedures and requirements required by law relative to performing public works; entering into contracts; incurring obligations; employment; using volunteer workers; renting equipment; acquiring and distributing supplies, materials, and facilities with or without compensation; and appropriating and spending municipal funds.

Employees who render emergency management aid outside their home boundaries have the same powers, duties, rights, and privileges they have in their own political subdivisions. Their compensation, travel, maintenance, and personal injury or death payments must be borne by the political subdivision that receives the aid. The costs of operating and maintaining equipment provided by the political subdivision supplying the aid, as well as the costs of repairing or compensating for damage to that equipment, must also be borne by the political subdivision receiving the aid. However, where service or equipment is volunteered, or property is taken, compensation may be limited.

The governing body of each political subdivision is authorized to enter into mutual aid agreements for emergency aid. Agreements must be consistent with the TEMP. Each local emergency management agency has the duty in emergencies to render assistance to the fullest possible extent in accordance with the provisions of its mutual-aid agreements. The violation of any order, rule or regulation issued during an emergency declared under the emergency management statute is a Class A misdemeanor.

Notice of the suspension of any state or federal funding related to emergency management programs must be provided by TEMA to the state senator and representative who represent the affected area, and to the “principal officer” of the municipality or county, if applicable. The notice must include, among other things, the

date, amount, length of, and reasons for the suspension.

### ***Disaster Relief***

A municipality's governing body may apply to the state Disaster Relief Commission for financial help with natural disasters when federal funds are not available. Up to \$1 million is authorized for a "declared localized disaster." Such grants are subject to whether there are sufficient funds in the contingency reserve account for civil defense and disaster relief (T.C.A. § 58-2-501–518).

### ***Terrorism***

T.C.A. § 68-56-104 creates the Public Health Emergency Advisory Committee to develop a statewide plan to counter bioterrorism. T.C.A. § 68-56-107 creates the Hospital Bio-preparedness Planning Committee to develop and implement regional hospital plans to handle bioterrorism and other emergencies. Municipal representatives serve on both these committees. There also are several crimes related to terrorism and enhanced punishment when terrorism is involved in crimes generally not considered terrorist in nature. See T.C.A. § Titles 39 and 40. See also "Price Gouging During States of Emergency" in the chapter on business regulation.

# Streets and Other Public Ways

## State Highways

All costs of designing, constructing, and maintaining a state highway through a city are paid by the state. The state may contract with a city and reimburse it for constructing a state highway through the city (T.C.A. § 54-5-201).

The state may contract with a city to maintain a state highway through the city. All reimbursements under the contract must be approved by the state Department of Transportation (T.C.A. § 54-5-203).

Cities may improve or add to the state highway system at their own expense. The project must be approved by the commissioner of Transportation. Upon completion of the project in conformance with state standards, the state Department of Transportation must assume maintenance responsibilities (T.C.A. § 54-5-140).

The state has sole authority to select which streets will be designated state highways and to determine construction specifications for highways (T.C.A. § 54-5-202, T.C.A. § 54-5-205).

(See Chapter 16, “Utilities,” for information on utility relocations for highway construction.)

## Interstate Highway System

Parts of interstates running through cities must be maintained by the state. However, the city, not the state, has authority to maintain and pay for interstate lighting. Such lighting must meet state-prescribed standards (T.C.A. § 54-5-206).

If a city fails to enter into an agreement with the state about acquiring rights of way for interstate highways or does not abide by such an agreement, the state may, on its own, locate and construct interstate highways in a municipality. This includes exercising eminent domain and adjusting and/or relocating utility facilities (T.C.A. § 54-5-207–208).

No ordinance may be passed by a city that would cause the state to lose federal aid funds for interstates (T.C.A. § 54-5-209). The costs of relocating utility facilities for interstates may be borne by the state, provided funds are available and the work meets state approval (T.C.A. § 54-5-801–807).

If interstate connector routes are required, cities and counties may enter into construction agreements with the state. The city or county must agree to pay 50 percent of the project and assume all maintenance costs after construction is complete. The city

must deposit with the state 50 percent of right-of-way acquisition costs before any land is obtained for the project. Work will not be started until 50 percent of the remaining cost is deposited with the state. The same rules apply to fully controlled-access highway connector routes (T.C.A. § 54-5-501–508).

## Metropolitan Planning Organizations

Federal highway legislation requires cities in metropolitan areas to participate in regional transportation planning organizations in order to receive federal funding for highways and other transportation projects. The state Department of Transportation participates in the Metropolitan Planning Organization process and manages federal planning funds. State law authorizes these cooperative planning agreements (T.C.A. § 54-18-101–104).

### ***Cooperative Planning***

Cities may enter into agreements with the state Department of Transportation and State Planning Office to develop a continuing and comprehensive transportation plan to ensure that projects reflect the needs and desires of local government (T.C.A. §§ 54-18-101 *et seq.*).

## Street Construction

### ***Ramps for the Handicapped***

#### **State Requirements**

“Every incorporated city and town” must install ramps “at crosswalks in both business and residential areas when making new installations of sidewalks, curbs, or gutters or improving or replacing existing sidewalks, curbs, or gutters” to facilitate the movement of people in wheelchairs and others with mobility impairments. The state Department of Transportation must furnish design standards for such ramps, and construction must be in accordance with those standards (T.C.A. § 7-31-114).

#### **Federal Requirements**

Under the Americans with Disabilities Act, local governments must provide curb ramps or other sloped areas at the intersections of newly constructed or altered streets, roads or highways to make such streets accessible for the handicapped (28 CFR 35.151).

### ***Public Bridges***

A city and a county may agree to construct and share the costs of a free or toll bridge over any stream in or next to a municipality. Bonds may be sold to finance such a project (T.C.A. § 54-11-222–224).

### ***Bridge Grants***

The 1990 Bridge Grant Program Act created a bridge replacement and rehabilitation program for local governments. The Tennessee Department of Transportation administers the program and may approve grants for up to 70 percent of project cost. Participating cities must comply with National Bridge Inspection Standards (T.C.A. § 54-

4-501–508).

### **Condemnation**

Municipalities are authorized to condemn land for streets and street-related purposes under various statutes

- Streets—T.C.A. § 7-35-107, T.C.A. § 29-16-101, T.C.A. § 29-17-801;
- Public works projects—T.C.A. § 9-21-107;
- Controlled-access highways—T.C.A. § 54-16-104; and
- Drainage ditches—T.C.A. § 7-35-101, T.C.A. § 29-16-201.

Generally, the procedures outlined in T.C.A. § 29-16-101 and T.C.A. § 29-17-801 govern the condemnation of property. (See *Eminent Domain in Tennessee: An Attorney's Guide* by James Murphy, The University of Tennessee Municipal Technical Advisory Service, 1992; updated by Dennis Huffer, 2004.)

### **Construction Guarantee**

In a contract for paving a public way, cities may require that the contractor guarantee “to maintain and repair the same for such time as the governing body or board thereof shall deem proper” (T.C.A. § 7-31-113).

### **Plans, Specifications, and Estimates**

Plans, specifications, and estimates for any public works project exceeding \$25,000 must be prepared by a registered architect or engineer (T.C.A. § 62-2-107).

## Miscellaneous Provisions

### **Vandalism and Obstructing Roadways**

The state’s criminal code defines vandalism as “knowingly caus(ing) damage to or the destruction of any real or personal property of ... any ... city or town.” Whether the offense is a misdemeanor or a felony depends on the value of the damage (T.C.A. § 39-14-408).

Unlawful possession of a traffic-control sign acquired or erected after July 1, 1998, is a Class B misdemeanor punishable by a fine up to \$500. The sign must indicate the municipality that erected the sign and the date it was erected (T.C.A. § 54-10-112–113). It is a Class A misdemeanor for an unauthorized person to carve upon, mark upon, or destroy, deface, steal or remove any bridge, overpass, tunnel, fence, wall, traffic control device, sign, or other highway structure or building (T.C.A. § 54-1-134).

Obstructing a highway, street, or sidewalk is a Class C misdemeanor. It is a defense to prosecution if the obstruction is a charitable solicitation roadblock done by a 501(c)(3) or (4) charitable organization if

- Reasonable precautions are taken; and

- The organization has the local police department's written approval.

The municipality granting the roadblock permit is given immunity for accidents resulting from the roadblock. A municipality may, by ordinance, prohibit charitable roadblocks and otherwise regulate collecting donations on municipal streets (T.C.A. § 39-17-307).

### ***Criminal Littering***

Littering public or private property is a Class B misdemeanor. Courts are authorized to require a convicted litterer to clean up what he or she dropped and spend up to 11 months, 29 days removing litter from state highways or other appropriate public locations (T.C.A. § 39-14-502).

### ***Controlled-access Streets***

Cities have the authority to designate controlled-access streets and regulate entering and exiting such streets by constructing raised curbs, markers, etc. Constructing any commercial enterprise is prohibited on such streets. The same authority to designate and regulate extends to local service roads adjacent to controlled-access streets (T.C.A. § 54-16-102–109).

### ***Height Limits on Buildings Along Scenic Routes***

Buildings (except silos or barns) constructed on designated scenic routes may not be higher than three stories if they are within 1,500 feet of the highway (T.C.A. § 54-17-115).

### ***Hot Mix Asphalt and Aggregate Production Facilities***

Municipalities and counties may, alone or cooperatively, own and operate hot mix asphalt and aggregate production facilities (T.C.A. § 12-8-101). This law requires municipalities and other local governments that want to own and operate an asphalt or aggregate production facilities plant to prepare a financial feasibility study that must be submitted to the comptroller and a financial feasibility oversight committee created in the statute. The committee must hold a hearing for which the mayor of the municipality sets a date and the municipality gives notice. The committee must report on its opinion(s) of the feasibility of the project. The governing body may then determine by a two-thirds vote to approve or deny the acquisition of the plant or facility.

### ***Contracts with the County***

A municipality may contract with a county road department to perform road work for cities if the county is paid all its expenses for performing such work (T.C.A. § 54-7-202(d)(2)).

### ***Railroad Crossings***

T.C.A. § 65-11-101 requires plans for proposed public railroad crossings and conversions of private to public crossings on streets and highways to be submitted to the Department of Transportation. The department must submit the plans to the affected

local government for review and comment before it approves or disapproves the plans. This section also requires any entity that wants a railroad crossing constructed or converted to a public crossing to pay all costs of the construction or conversion.

# Transportation and Motor Vehicles

## Public Transportation

Full power to acquire, construct, and operate any type of public transportation system is vested in counties and municipalities “or any combination thereof” (T.C.A. § 7-56-101–109).

### ***Notification of State Department of Transportation***

Certified copies of any ordinances regulating trains within a city’s limits “or newly extended limits” (annexation ordinances seem to be included) must be sent to the commissioner of Transportation. Within seven days, the commissioner is to mail copies to the railroad’s registered agent for service of process. Such ordinances shall be effective 15 days after receipt by the registered agent. An ordinance becomes effective when received by the executive director if a railroad fails to register an agent for service of process (T.C.A. § 7-51-801–804).

However, municipalities may not regulate train speeds within city limits. Such authority belongs only to the Federal Railroad Administration pursuant to the Federal Railroad Safety Act (45 U.S.C. 421 *et seq.*), *CSX Transportation v. City of Tullahoma*, 705 F. Supp.385 E.D.Tenn. 1988).

### ***Transit Authority***

A transit authority may be created by ordinance or by resolution. Contracting for management of a transit system is specifically authorized as an alternative to direct operation by a municipality, county, or transit authority. Service may be extended beyond county lines and, with necessary approvals of their regulatory agencies, into adjoining states.

A municipality or transit authority may issue debt, exercise eminent domain, and enter into interlocal agreements with other cities, counties, and even other states regarding purchasing and operating public transportation systems.

Additionally, a municipality, county, or combination thereof may empower a transit authority to “license and regulate all forms of public transportation,” such as taxicabs and airport limousines.

If an existing system is acquired, a municipality is empowered to make “fair and equitable arrangements” to preserve employees’ benefits typically included in union contracts. Collective bargaining and voluntary arbitration also are authorized. Strikes are prohibited (T.C.A. §§ 7-56-101 *et seq.*).

### ***Subsidized Private System***



Any municipality, county, or combination thereof may pay a reasonable subsidy to a public or private company operating a transit system, “the amount thereof to be wholly in the discretion of the governing body” (T.C.A. § 7-56-107).

### ***Gas Tax for Transit System***

To help fund its transit system, a county or city governing body may call for a referendum on a gasoline tax of up to 1 cent per gallon (T.C.A. § 67-3-2101–2112).

### ***Franchise of Transit Service***

Regulating, controlling, and franchising street railways and bus lines are vested in a municipality’s governing body, which may delegate such power to a “municipal regulatory agency” or to the state Department of Transportation. This jurisdiction shall extend seven miles beyond a city’s boundary for cities of more than 100,000 in population, four miles for those with populations of between 50,000 and 100,000, and two miles for those with populations of less than 50,000. An operating company must obtain a municipality’s consent before using any of its streets (T.C.A. § 65-16-101, T.C.A. § 65-16-105).

### ***State Grants***

The state may provide grants for mass transportation capital projects or technical studies. Funded projects must be approved by the state commissioner of Transportation and must be consistent with the statewide, comprehensive plan for transportation. Cities and counties are empowered to acquire, operate, and maintain mass transportation facilities or to contract with private companies for such services (T.C.A. § 13-10-107–109).

## **Traffic Control**

### ***Traffic-Control Lights***

The design of traffic lights is established by state law. Green means “go,” yellow means “caution,” and red means “stop.” All lights must have a uniform arrangement of colored lenses. In vertical lights, red lenses must be above yellow and green lenses. In horizontal lights, red lenses must be to the left of yellow and green. Yellow lenses must be between red and green lenses. Yellow lights must show for at least three seconds, and a city is responsible for setting timers on city-owned lights to comply with this requirement. Right turns during red lights are permitted unless a “NO TURNS ON RED” sign is posted by the city. After a full stop, a left turn may be made during a red light onto a one-way street where traffic moves to the left if a sign granting permission is in place. Motorcycle operators may proceed through an intersection red light after stopping and ascertaining that this can be done safely if the light is controlled by a vehicle detection device that is not activated because of the size of the motorcycle (T.C.A. § 55-8-110).

### ***Traffic-Control Signs***

Municipalities must comply with the *Manual on Uniform Traffic-Control Devices for Streets and Highways*, which contains requirements for the design and location of signs, signals, and markings. The manual also spells out rules for posting traffic regulations on or along all streets and highways (T.C.A. § 54-5-108).

To indicate ownership, any local government agency may stamp, etch, or otherwise permanently mark the backs of signs, signals, etc., with letters between one-quarter and three-quarters of an inch high (T.C.A. § 55-8-184).

### ***Enforcement of Motor Vehicle Rules and Regulations — State Pre-emption***

City ordinances may adopt by reference appropriate provisions of the state Rules of the Road and impose additional regulations not in conflict with them for operating vehicles within a city. Primary responsibility for enforcing state and local motor vehicle laws falls on municipalities within their city limits. In addition to or in lieu of any other penalty imposed, a court may require violators to attend a driver improvement course. The city may provide such a course and charge a fee of between \$50 and \$175. However, no person shall be refused admittance because he or she cannot pay (T.C.A. § 55-10-301). A city offering a course consents to having its course records inspected by the Department of Safety. Certain violations are exclusively state offenses and must be prosecuted in courts with state jurisdiction. These violations include driving while intoxicated or drugged, failing to stop after an accident, driving with a suspended or revoked license, and drag racing (T.C.A. § 55-10-307–308).

### ***Enforcement of Traffic Rules and Regulations on Private Property***

T.C.A. § 55-10-317 allows law enforcement agencies to enforce traffic laws on private streets in residential developments with single and multifamily dwellings. A majority of residents of the development must approve this in a petition to the governing body. The governing body must establish traffic laws in the development, just as it does for public streets (T.C.A. § 55-10-301).

With written permission from the property owner or manager, police officers may go onto the premises of any shopping center or office park that is generally open to the public to inspect any motor vehicle to determine if the vehicle is properly registered and licensed (T.C.A. § 55-10-316).

T.C.A. § 55-5-122(b) provides that subsection (a) of that section, which restricts the towing of vehicles on private property, does not restrict the authority of municipalities and metropolitan governments to regulate parking and towing of motor vehicles within their boundaries. (But see “Regulation of Towing or Wrecker Companies” in Chapter 13.)

### ***Pedestrian Traffic***

Cities may by ordinance require pedestrians to comply with traffic-control devices and

prohibit crossing a business district street or a designated highway except at crosswalks (T.C.A. § 55-8-133)

### ***Child and Passenger Safety Restraints – Motor Vehicles***

T.C.A. § 55-9-602 sets out complicated requirements based upon age, weight, and height for persons transporting children in motor vehicles to follow in restraining them. The statute creates an exception for children unable to be transported in a conventional restraint. Municipalities are expressly authorized to adopt by ordinance the provisions of T.C.A. § 55-9-602.

T.C.A. § 55-9-603 provides that no person shall operate a motor vehicle in Tennessee unless that person and all passengers four years of age or older are restrained by a safety belt at all times when the vehicle is in forward motion. There are exemptions for certain types of vehicles and vehicles traveling at a top speed of 15 mph. This statute provides that it applies only to the operator and all passengers occupying the front seat of a passenger motor vehicle. However, T.C.A. § 55-9-602, apparently supercedes T.C.A. § 55-9-603 with respect to children through age 15. A violation of 55-9-602 is a Class C misdemeanor, but offenders may, in lieu of a court appearance, pay a fine of \$10 for the first offense. If the vehicle operator or passenger is between the ages of nine and 15, inclusive, the fine in lieu of a court appearance is \$50. Clerks' fees, court costs and litigation taxes are also prohibited for convictions for violations involving children ages nine through 17.

A violation of 55-9-603 is also a Class C misdemeanor. A person charged with a violation may, instead of appearing in court, submit a fine of \$10 for the first violation and \$20 for second and subsequent violations. If a violation involves a 16 or 17 year old, the initial fine in lieu of a court appearance is \$20.

Law enforcement officers observing a violation of 55-9-603 should issue a citation but not arrest a person solely for a violation of this law.

### ***Railroad Crossings Protection***

T.C.A. § 55-8-146 provides that municipalities may erect stop signs at dangerous railroad crossings with the approval of the state Department of Transportation. It was also held by the Tennessee Supreme Court in *Southern Railway Co. v. Knoxville*, 223 Tenn. 90, 442 S.W.2d 619 (1968), that a general grant of police power empowers a municipality to require by ordinance a railroad to pay for and install crossing gates or signals if they are reasonably required to protect motorists. However, T.C.A. § 65-11-113 authorizes the state, at the expense of the railroad, the state, and the municipality, to require railroads to install certain markings and signals at an unmarked crossing where there has been a fatality and where other conditions outlined in that statute exist. The extent to which those statutes and that case may conflict is not clear.

## Establishing Speed Zones

### ***Speed Zones in General***

Municipalities are authorized to establish upper speed limits not exceeding 55 mph on the streets within their jurisdictions that are not part of an interstate or controlled-access highway in the state road and highway system. T.C.A. § 55-8-152(c) sets the speed limit on state controlled-access highways and interstates at 70 mph. The minimum speed in a left lane is 55 mph. T.C.A. § 55-8-152(h) provides that only the state Department of Transportation may set speed limits on access-controlled state highways and interstates. It also is authorized to set minimum speed limits “below which no person shall drive a vehicle except when necessary for safe operation or in compliance with the law.” The minimum speed limit must be set on the basis of an engineering and traffic investigation showing that “slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic ...” Presumably, that authority would not extend to interstate or controlled-access highways in the state road and highway system. Municipalities have the authority to erect the appropriate speed limit signs and traffic signals (T.C.A. § 55-8-152, 153, 154).

### ***School Zones***

With the exception of municipalities in Hawkins and Sullivan counties, municipalities are authorized to set special speed limits on streets adjacent to school grounds (except at school entrances and exits from controlled-access highways in the state highway system where the Department of Transportation has the authority to set speed limits).

The special speed limits must be

- Based on an engineering investigation;
- Not less than 15 mph; and
- In effect only when the proper signs are posted with a warning flasher or flashers in operation and only while children are actually present.

Where the municipal legislative body has not set a special speed limit, a person is *prima facie* guilty of reckless driving if exceeding 15 mph

- When passing a school during recess while a warning flasher or flashers are in operation; or
- Ninety minutes before or after the opening or closing of a school when children are actually going to or leaving the school.

The same rules apply to municipalities in Hawkins and Sullivan counties except that the distance from schools at which the municipality may set speed limits is one-quarter mile, and the period before the opening and closing hours of school is 40 minutes (T.C.A. § 55-8-152).

### ***Tennessee Department of Transportation***

The Tennessee Department of Transportation (TDOT) has the authority to lower the speed limit

- On the state system of roads and highways as it deems appropriate due to

- conditions affecting the roadway or traffic; and
- “In business, urban, or residential districts or at any congested area, dangerous intersection, or whenever and wherever the department shall determine, on the basis of an engineering and traffic investigation, that the public safety requires a lower speed limit.” Apparently, this is limited to the state system of roads and highways. The violation of TDOT-set speed limits where construction workers are present is a Class B misdemeanor, carrying a fine of from \$250 to \$500 (T.C.A. § 55-8-152–153).

## Traffic Citations

### ***Traffic Citations in Lieu of Arrest***

When a person violates any traffic ordinance or regulation in the presence of a law enforcement officer, member of the fire or building department designated a special city police officer, or transit inspector employed by a public transit system, the officer or inspector may issue a citation or complaint in lieu of arresting the offender and having a warrant issued. The general provision in state law authorizing the issuance of a citation rather than a custodial arrest (T.C.A. § 40-2-118) does not apply to citations for traffic or financial responsibility violations. Traffic and financial responsibility citations must be issued under T.C.A. § 55-10-207.

A copy of the citation, stating the offense charged and where and when to appear in court, must be given to the offender (T.C.A. § 7-63-101).

### ***Financial Responsibility***

T.C.A. § 55-12-139 requires law enforcement officers to require evidence of financial responsibility from a person charged with a moving traffic violation under state law, a local ordinance regulating traffic, or at the time of an accident causing injury or death or property damage greater than \$50. “Financial responsibility” generally means documentation of insurance. Failure to show evidence of financial responsibility is a Class C misdemeanor punishable by a fine of up to \$100. T.C.A. § 55-10-307 authorizes cities to adopt the financial responsibility law by reference. The maximum fine for an ordinance violation is \$50.

### ***Uniform Traffic Citations***

Municipal law enforcement officers may use a uniform traffic citation form prescribed by the Department of Safety (T.C.A. § 55-10-208).

### ***Cancellation of Traffic Citation***

A person is guilty of a misdemeanor if he or she cancels a traffic citation or seeks to have one canceled by any method other than that established by law. Records of citations required by T.C.A. § Title 55, Chapters 8 and 10, and issued by city police officers must be audited by the city’s fiscal officer (T.C.A. § 55-10-204).

## Regulation of Bicycles

### ***Bicycles Subject to Traffic Rules***

T.C.A. § 55-8-171–178 contain special rules for the operation of, and equipment required on, bicycles. Generally, bicycle riders are granted the same rights and are subject to the same rules of the road that apply to drivers of motor vehicles, except those that do not by their nature apply (T.C.A. § 55-8-152). T.C.A. § 55-9-602–603 contain an outline for the distribution of fines and costs for convictions under that law.

Child bicycle safety regulations also are found at T.C.A. §§ 55-52-101 *et seq.* These regulations

- Require children 16 years of age and under to wear a helmet that meets standards contained in the law when riding a bicycle upon any highway, street or sidewalk;
- Require any passenger on a bicycle who weighs less than 40 pounds or is less than 40 inches tall to be properly seated and adequately secured to a restraining seat; and
- Prohibit the rental or lease of any bicycle to, or use by, any person under 16 years of age unless the person is in possession of a protective helmet of good fit, or the rental or lease includes such a helmet, “and the person intends to wear the helmet ... at all times while operating or being a passenger on the bicycle.”

Any parent or guardian of a person under 12 years of age who knowingly permits that person to ride or be a passenger on a bicycle in violation of these regulations is subject to a civil penalty of \$2. Any other adult person who permits any person to ride or be a passenger on a bicycle in violation of these regulations is subject to the same penalty; however, the offender must be issued a warning on the first offense and a citation on the second and any subsequent offense. No arrest or custody of the offender is permitted in either case.

T.C.A. § 55-8-171–177 make the state’s traffic regulations applicable to bicycles.

## Regulation of Electrical Personal Assistive Mobility Devices (EPAMDs)

Municipalities may reasonably regulate but not generally prohibit EPAMDs. The use of EPAMDs may be restricted or excluded in certain areas in the interest of public safety or the preservation of natural areas, but only to the extent that bicycles are restricted or excluded. Users must obey speed limits and yield to pedestrians and human-powered devices. EPAMDs are not considered motor vehicles under state law, so registration and licensing requirements do not apply. The device or the operator must be equipped with reflectors and lights when the device is operated one-half hour before and after sunset and one-half hour before sunrise (T.C.A. §§ 55-53-101 *et seq.*).

## Regulation of Low Speed Vehicles

Municipalities may prohibit the operation of low speed vehicles on any street in their jurisdiction in the interest of public safety. A “low speed vehicle” is any four-wheeled electric vehicle, except golf carts, whose top speed is 25 mph or less but greater than 20 mph. Low speed vehicles may be operated only on streets with a posted speed limit of 35 mph or slower. Operators must possess a Class D driver’s license (T.C.A. § 55-8-101, 191).

## Parking Regulations

Parallel parking generally is allowed only on the right side of a street, except a city may, by ordinance, permit parking on the left side of one-way streets and angle parking on any street. The state Department of Transportation must approve angle parking on federal and state highways (T.C.A. § 55-8-161).

### ***Handicapped Parking***

Any person without the appropriate license plate or placard who parks in a parking space designated with the wheelchair-disabled sign may be punished by a \$100 fine (T.C.A. § 55-21-108, T.C.A. § 55-8-160(a)(15)). In addition to the fine, the vehicle may be towed. Signs designating handicapped parking must indicate that improperly parked vehicles may be towed and the driver fined \$100. The signs must also provide the name and number of the property owner, lessee, or agent in control of the property (T.C.A. § 55-21-108(a)).

A person is “disabled” for purposes of handicapped parking if he or she cannot walk 200 feet without stopping to rest (T.C.A. § 55-21-102).

A disabled veteran or physically handicapped person displaying a certificate or special license plate is relieved “from liability for any violations with respect to parking” except parking in a designated fire lane or a lane required for morning or afternoon rush-hour traffic (T.C.A. § 55-21-106).

Any municipality, county, or metropolitan government may establish a special unit to enforce disabled parking laws and ordinances. Any person age 21 or older, regardless of disability status, may be appointed as a volunteer to enforce parking laws for the disabled. Members of the special enforcement unit must wear a distinctive piece of clothing, law enforcement insignia, and a badge while on duty. These provisions apply only in municipalities, counties, and metropolitan governments that adopt them by a two-thirds vote (T.C.A. § 55-21-110).

### ***Parking Near Fire Hydrants***

A municipality may restrict parking near a fire hydrant only within 7.5 feet to 15 feet of the hydrant. The restricted distance must be appropriately identified (T.C.A. § 55-8-

160(a)(4)).

## Operation of Motor Vehicles

### ***Following Fire Apparatus***

Drivers other than those on official business are prohibited from following within 500 feet behind any fire apparatus answering a call and may not park in the same block as the fire equipment. No driver may cross an unprotected fire hose without permission from the fire department official in command (T.C.A. § 55-8-168–169).

### ***Transporting Children in Pickup Trucks***

It is a Class C misdemeanor under state law to transport upon any street or highway of any city a child under age 12 in the bed of a pickup truck of less than three-quarters of a ton. A city may, by ordinance, make it a local violation to transport upon any city street or highway a child between six and 12 years old in the bed of a pickup truck of less than three-quarters of a ton. However, people transporting children in parades or for agricultural purposes are exempt from this provision (T.C.A. § 55-8-189).

### ***Vehicle Weight***

Maximum weight, height, and length limits for trucks and trailer trucks are established by state law. It is the duty of municipal officers to prohibit any vehicle from exceeding such limits on a public highway unless a special permit has been issued by the state commissioner of Transportation (T.C.A. §§ 55-7-101 *et seq.*).

### ***Accident Report***

Any automobile accident that involves bodily injury, death, or damage to a person's property of more than \$400 must be reported. An investigating officer must send a copy of the report to the state Department of Safety within seven days of completing the investigation (a copy is to be kept in the district Highway Patrol office). Standard report forms are supplied to any city police department by the Department of Safety (T.C.A. § 55-10-107, T.C.A. § 55-10-108(b), T.C.A. § 55-10-111, T.C.A. § 55-12-104).

### ***Emergency Vehicles***

T.C.A. § 55-8-108 allows the driver of an authorized emergency vehicle responding to an emergency call, pursuing a suspected law violator, or responding to a fire alarm when the vehicle is making use of an audible and visual signal to

- Disregard parking and standing regulations;
- Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
- Exceed speed limits so long as life or property is not thereby endangered;  
and
- Disregard movement and turning regulations.

While parked or standing, an authorized emergency vehicle must use only visual



signals.

The same statute provides that these provisions “shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of the driver’s own reckless disregard for the safety of others.”

This statute also limits the liability of law enforcement officers and their employing governments for injuries to both suspected law violators and to innocent third parties arising from their pursuit of fleeing suspected law violators, in the following language:

*Notwithstanding the requirement of this section that drivers of authorized emergency vehicles exercise due regard for the safety of all persons, no municipality or county ... nor their officers or employees shall be liable for any injury proximately or indirectly caused to an actual or suspected violator of a law or ordinance who is fleeing pursuit by law enforcement personnel. The fact that law enforcement personnel pursue an actual or suspected violator of a law or ordinance who flees from such pursuit shall not render the law enforcement personnel or his or their employers liable for injuries to a third party proximately caused by the fleeing party unless the law enforcement personnel were negligent in his or their conduct, and such negligence was a proximate cause of the injuries to the third party.*

However, under *Haynes v. Hamilton County*, 883 S.W.2d 606 (Tenn. 1994), the above limitation on the liability of law enforcement officers and their employing governments in third-party injury cases is quite narrow. There, the Tennessee Supreme Court pointed out that while the above limitations on liability provided absolute immunity to local governments for the injury or death of a fleeing suspect, they did not necessarily have the same effect with respect to innocent third parties injured in police pursuits. The court said that in those cases, negligent “conduct” within the meaning of that statute could include the police officer’s decision to initiate or to continue the pursuit. The determination of whether such a decision is reasonable must weigh the risk of injury to the third party against the interest in apprehending suspects. “Factors relevant to that determination include the speed and area of the pursuit, weather and road conditions, the presence or absence of pedestrians and other traffic, alternative methods of apprehension, applicable police regulations, and the danger posed to the public by the suspect being pursued.” Those factors are not exclusive, continued the court, and “overall, a police officer’s conduct should be viewed in light of how a reasonable, prudent police officer would respond under the circumstances and not judged with the perfect vision afforded by hindsight.”

Municipal hot-pursuit policies should be drafted, and police officers should initiate and continue hot pursuits with *Haynes* in mind.

### ***Funeral Processions***

T.C.A. § 55-8-183 governs the identification, escort, operation, and conduct of traffic

with respect to funeral processions. Any municipality may adopt the provisions of this law by a two-thirds vote of its legislative body. The presiding officer must certify its adoption to the secretary of state.

This law provides that where a funeral procession is properly identified, it is an offense punishable by a fine of up to \$50 for the operator of a motor vehicle to

- Knowingly fail to yield the right-of-way to the procession across an intersection;
- Pass or attempt to pass the procession from behind on a two-lane street, road or highway; or
- Drive or attempt to drive between the vehicles in the procession.

For the purposes of this law, a “properly identified” funeral procession must be “indicated by a flashing amber light, an auditory signaling device mounted on the lead vehicle, or by other properly identified escort, and a flag or other appropriate marking device on each vehicle in the procession indicating that such vehicle is part of the funeral procession.”

Many municipalities provide police escorts to funeral processions. They may be held liable under the Tennessee Governmental Tort Liability Act for negligent escort. (*Anderson v. City of Chattanooga*, 978 S.W.2d 105 (Tenn. App. 1998)). Generally, T.C.A. § 55-8-153 does not appear to affect the liability of municipalities that provide funeral escorts. Whether or not a municipality provides funeral escorts, it probably has the right to impose reasonable time, place and manner restrictions on funeral processions.

Oncoming traffic meeting a funeral procession is no longer prohibited from pulling over and stopping. Motorcycle escorts of funeral processions may have a green strobe light of a type approved by the county sheriff that is used only when escorting a funeral. Motorcycle escorts also may have a bell or siren approved by the sheriff that is used only when escorting a funeral procession. Motorcycle escorts may operate between lanes or rows of vehicles (T.C.A. § 55-8-183).

### ***Disposal of Abandoned, Immobile or Unattended Motor Vehicles***

T.C.A. §§ 55-16-101 *et seq.* authorize municipalities to “take into custody” and dispose of certain abandoned, immobile or unattended motor vehicles. “Abandoned motor vehicle” means a motor vehicle that meets the conditions below.

“Immobile motor vehicle” means any motor vehicle, trailer, semitrailer, or combination or part of any of the above that is immobilized and incapable of moving under its own power due to an accident, mechanical breakdown, weather conditions, or other emergency condition.

“Unattended motor vehicle” means any motor vehicle, semitrailer, or a combination thereof, that is on public or private property, is unattended by the owner or authorized driver, and interferes with the orderly flow of traffic, or a motor vehicle that is unattended

by reason of the arrest of the driver (T.C.A. § 55-16-103). Three different situations are described.

**Case 1:** When an abandoned motor vehicle is more than five years old and has no engine or is otherwise totally inoperable, a municipality (if the vehicle is on municipal property) or any person upon whose private property it is found may dispose of it to a demolisher without any notice to the owner, holding any auction, and producing any title (T.C.A. § 55-16-108(e)).

Abandoned Motor Vehicle			
Location	Vehicle Age	Time Left Unattended	Condition
Public Property	More than 4 years old	More than 10 days	N/A
Public Property	N/A	More than 3 days	Obvious state of disrepair
Public Property	N/A	More than 48 hours	Illegally parked
Public Property	N/A	More than 48 hours	Without consent of owner or person in control of property
Garage, trailer park, parking lot, or any type storage*	N/A	More than 30 consecutive days	N/A
*Does not apply to a motor vehicle where its owner is personally known to the owner or operator of the establishment and where the owner had made arrangements for the parking and storage of such vehicle for a period of longer than 30 days.			

**Case 2:** When a properly licensed motor vehicle is abandoned on a public way but otherwise fits the description of Case 1, then it may be disposed of to a demolisher if no claim is filed within 10 days (T.C.A. § 55-16-108(f)(1)).

**Case 3:** If neither of the above cases applies, two detailed procedures are prescribed for taking a vehicle into custody and providing notice to the owner and lienholders.

**Post-seizure Notice**

Two kinds of notice are required when a motor vehicle is taken into custody before notice is given of its seizure

- When any person (including a police officer) takes possession of a vehicle found abandoned, immobile, or unattended, the action shall be reported immediately to the Division of Motor Vehicles for verification of ownership on a form prescribed and provided by the registrar of motor vehicles;
- A police department that takes the abandoned, immobile, or unattended vehicle into custody shall notify within 15 days by registered mail, return

receipt requested, the last known registered owner and all lienholders of the motor vehicle that the vehicle has been taken into custody. The notice shall

- a. Describe the year, make, model, and serial number of the vehicle;
- b. Set forth the location of the facility where the motor vehicle is being held;
- c. Inform the owner and any lienholders of their right to reclaim the motor vehicle within 10 days after the date of the notice, upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody; and
- d. State that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by them of all right, title, and interest in the vehicle and consent to its sale at public auction (T.C.A. § 55-16-1050).

Any garage keeper or towing firm, which has in its possession an abandoned, immobile, or unattended motor vehicle taken into custody and placed in the legal possession of the garage keeper or towing firm by the police department, shall comply with the same notice requirements.

#### ***Pre-seizure Notice***

The police department is not required to provide the post-seizure notice to the owner and lienholders of vehicles if it had provided a pre-seizure notice that the vehicle had been found to be abandoned, immobile, or unattended. The pre-seizure notice must

- Be sent by registered or certified mail, return receipt requested, to the last known address of the owner of record and to all lienholders of record. If the owner or lienholders cannot be located through the exercise of due diligence, notice by publication shall be given in one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned, immobile, or unattended. The notice shall be in a small display ad format, but one advertisement may contain multiple listings of abandoned, immobile, or unattended vehicles.
- Be written in plain language and contain the year, make, model and VIN of the motor vehicle (if ascertainable), the location of the vehicle, and a statement advising that the owner has 10 days to appeal the determination of the police department that the vehicle is abandoned, immobile, or unattended, or to remove the vehicle, or the police department will take it into custody.
- Inform the owner and any lienholders of their right to reclaim the motor vehicle after it is taken into custody but before it is sold or demolished, upon payment of towing, preservation, storage, or any other charges resulting from taking the vehicle into custody, and state that failure to exercise their rights to reclaim the motor vehicle shall be deemed a waiver of all right, title, and interest in the vehicle and consent to its demolition or sale at public auction.

- Set forth the consequences and effect of the failure to reclaim an abandoned, immobile, or unattended motor vehicle.

If the owner or lienholders fail to appeal the determination that the vehicle is abandoned, immobile, or unattended, or if they fail to remove the motor vehicle within the time allowed for appeal, the police department may take the vehicle into custody. If an appeal is made, the motor vehicle shall not be taken into custody while the appeal is pending. Failure to appeal within the allotted time shall, without exception, constitute waiver of the right to appeal (T.C.A. § 55-16-105).

Employees of public agencies or towing companies who take possession of a vehicle found abandoned, immobile, or unattended shall verify ownership of the vehicle through the Tennessee Information Enforcement System (TIES) and record the ownership information on the towing sheet or form. The agency shall also provide ownership information to any towing company or garage keeper with whom it has a contract. If the response from TIES is “Not on File,” the agency shall contact the Department of Safety, Title and Registration Division, which will search the records not contained in TIES for ownership information. If that division locates ownership information, it will notify the appropriate public agency, and that agency shall distribute the information (T.C.A. § 55-16-105).

An unclaimed, abandoned, immobile, or unattended motor vehicle taken into custody shall be sold at a public auction pursuant to T.C.A. § 55-16-106. Alternatively, the police department may waive its rights to sell the vehicle in favor of the garage keeper or towing firm in whose possession the vehicle was legally placed by the police department. If it has made repairs to the vehicle, the garage keeper or towing firm may enforce its garage keeper’s lien pursuant to T.C.A. § 66-19-103. If it has not made repairs, it may, after 30 days following the police department’s waiver of rights, sell the vehicle at public auction and keep the proceeds of the sale. The purchaser of the motor vehicle takes title to it free and clear of all liens and claims of ownership (T.C.A. § 55-16-106–107).

## Miscellaneous Provisions

### ***Equipment on Emergency Vehicles***

Every police and fire department vehicle must have a bell, siren, or exhaust whistle approved by the state Department of Safety or local police authorities (T.C.A. § 55-9-201). Blue flashing lights may be used only by full-time, salaried, law enforcement officers (T.C.A. § 55-9-414).

### ***Authorized Emergency Vehicles***

Rescue and emergency response vehicles owned by a state-chartered rescue squad, emergency lifesaving crew, or active unit of the Tennessee Association of Rescue Squads are included in the definition of “authorized emergency vehicle” (T.C.A. § 55-8-101(2)(C)(ii)).

### ***Highway Safety Programs***

Tennessee municipalities are authorized to carry out highway safety programs within their jurisdictions. These programs must be approved by the governor and must be in accordance with the secretary of Commerce's uniform standards contained in provisions of the Federal Highway Safety Act of 1966 (T.C.A. § 55-20-101).

### ***Stopping Solid Waste Vehicles on Public Streets***

Certain restrictions against parking on public streets do not apply to garbage trucks collecting trash. These vehicles must have flashing hazard lights that are activated when stopping or stationary, and they must be clearly viewable from 200 feet in either direction while stopped. Special lighting is also required in accordance with rules promulgated by the state Department of Safety (T.C.A. § 55-8-158, T.C.A. § 55-8-160).

### ***Street Sweepers***

T.C.A. § 55-8-190 provides that street sweepers may travel below the lawful minimum speed and stop to collect debris at any time in residential areas and in all nonresidential areas except between 6:30 a.m. and 8:30 a.m. and between 3:30 p.m. and 6:00 p.m. on any weekday. These limitations do not apply if there has been an emergency or event that would make street sweeping necessary.

### ***Engine Compression Brakes***

A municipality may implement a state law within the municipality that requires truck tractors and semi-trailers that use engine compression brakes to have an approved muffler (any muffler that complies with Federal Motor Carrier Safety Regulations on noise emissions compiled in 49 C.F.R., 325.1, *et seq.*) by requesting the state Department of Transportation to place signs. The municipality must pay for the signs before manufacture or installation (T.C.A. § 55-7-117).

# Parks and Recreation

## Programs and Services

Municipal recreational programs are authorized by an optional general law. The law also authorizes joint programs by two or more cities. A city's governing body has the option to retain control of such a program, enter into an agreement with one or more municipalities for operation under a joint board or authority, or place it under a recreation board or commission, school board, or park board (T.C.A. § 11-24-103–105).

To protect property under its jurisdiction, a recreation board may promulgate rules to be enforced by local law enforcement officials. Maintenance and operation of a recreational system may be funded from property taxes, general revenue, user fees and charges, or any other appropriate source. Any city may levy a special tax earmarked for playground and recreational purposes (T.C.A. § 11-24-101–112). Cities or recreation boards may contract with businesses, civic groups, or individuals for volunteer services to maintain and improve parks (T.C.A. § 11-24-202).

The Parks and Recreation Technical Advisory Service (PARTAS) in the Department of Environment and Conservation helps municipalities establish and operate parks and recreational programs (T.C.A. § 11-9-108).

Conservation boards are authorized to develop and maintain county parks and recreational areas. These boards are empowered to enter into agreements with small cities to provide them with parks and recreational services (T.C.A. § 11-21-111–112).

## Recreation Grants

T.C.A. §§ 11-9-201 *et seq.* establish a program of matching recreation grants to cities and counties. Grants are for a three-year period and must be used to hire a recreation director, establish a recreation office, and hire two part-time summer leaders to develop recreation programs. In the first two years, the community must match up to \$25,000 from the state. In the third year, the community must fund the program completely or repay the state. Grants are awarded annually, with one award made in each grand division. Multigovernment proposals have priority.

## Weapons in Public Parks

With certain limited exceptions, it is an offense to possess or carry a weapon on the grounds of any public park or playground in any municipality if the weapon is not used for instruction, display, or sanctioned ceremonial purposes. Municipalities are required to post signs at all entrances and on any building or structure stating that violating this law is a misdemeanor and punishment is authorized. A municipality may exempt itself

from the sign requirements (presumably by some legislative act) (T.C.A. § 39-17-1311).

### School Property

Boards of education may let any city recreational system use any school building, grounds, or equipment if the recreational use does not interfere with school purposes (T.C.A. § 11-24-110).

### Swimming Pools

City swimming pools must comply with the Hotel, Food Service Establishment, and Public Swimming Pool Inspection Act of 1985. The commissioner of Health may grant variances and waivers that do not result in a health or safety hazard (T.C.A. § 68-14-303(3)).

Any public swimming pool owned by a “public entity” that is more than 30,000 square feet must have a full-time, staffed lifeguard station for each 6,000 square feet, or major portion thereof, available for public use. The commissioner of Environment and Conservation may increase the size of the area requiring a single lifeguard station (T.C.A. § 68-14-402).

### Forests

Cities are authorized to purchase and maintain forestry land under regulations approved by the state forester. The governing body may act after a two-week public notice that such a purchase is being considered. Controlling the land’s use and disposing of income from it are responsibilities vested in the governing body (T.C.A. § 11-23-101–105).

### Park Acquisition Grants

T.C.A. § 67-4-409(a) and (i) impose a real estate transfer tax of 37 cents per \$100 and earmark revenues from 1.75 cents to create a local parks acquisition fund. The fund provides matching grants to purchase land for parks, natural areas, and greenways and for capital projects in those areas. The Environment and Conservation and Agriculture commissioners and the Wildlife Resources Agency director promulgate regulations, set priorities, and approve each grant.

The Department of Environment and Conservation also manages procedures for awarding federal grants from the Natural Resources Trust Fund (T.C.A. § 11-14-301–307).

### Liability



Landowners, including governmental entities, are free from liability for giving permission to another person for use of the landowner's land for hunting, camping, canoeing, and a number of other specified recreational activities, except

- For willful or wanton conduct or gross negligence resulting in failure to warn of a dangerous condition, use, structure, or activities;
- Where the permission to make recreational use of the property was for a fee or price; and
- To people to whom the owner owed a duty to keep the premises safe or to warn of danger (T.C.A. § 70-7-101–104).

Chapter Twenty-One

# Code Enforcement and Building Inspection

A discussion of the rules for adopting model codes is in Chapter 4, “Ordinances and Codes.”

## Federal and State Pre-emption

### ***Mobile Homes***

The state establishes standards for electrical, gas, and oil systems in mobile homes and exempts state-approved systems from compliance with conflicting or more restrictive local ordinances (T.C.A. § 68-102-147(h)).

State statutes pre-empt local authority in some building code matters. For example, mobile home anchoring regulations must comply with the Tennessee Manufactured Home Anchoring Act (T.C.A. § 68-126-401–412).

Federal statutes also pre-empt local authority regarding manufactured home construction. 41 U.S.C. § 5403(d) sets manufactured home construction and safety standards. It provides

*Whenever a federal manufactured home construction and safety standard established under this chapter is in effect, no state or political subdivision of a state shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the federal manufactured home construction and safety standard.*

The federal manufactured home construction and safety standards are found at 24 C.F.R. § 3280.

### ***Statewide Building Standards***

T.C.A. §§ 68-120-101 *et seq.* authorize the state fire marshal to adopt minimum statewide building construction safety standards, and to adopt rules and regulations pertinent to those standards. Under rules of the Tennessee Department of Commerce and Insurance, Division of Fire Prevention, Chapter 0780-2-2 (April 1999), the state fire marshal has adopted

- *The Standard Building Code*, 1999 edition, published by the Southern Building Code Congress International, Inc., and
- *Uniform Fire Code* (NFPA No. 1– 2003 ), including each reference to NFPA 1, Chapter 43, thereof, published by the National Fire Protection Association. Each reference in NFPA 1, Chapter 43, to an NFPA code or standard shall be

deemed to be the edition thereof printed in the *National Fire Codes*, 2003 edition.

The state rules do not adopt any provision of those publications that establishes

- An option or recommended, rather than mandatory, standard or practice, except for Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems (NFPA 25-1995); or
- Any agency, procedure, fees, or penalties for administration or enforcement purposes.

The minimum standards adopted by the state fire marshal do not apply to one-family and two-family dwellings, nonresidential farm buildings, temporary buildings used exclusively for construction purposes, manufactured homes and recreational vehicles, and buildings or facilities reviewed and licensed by the board for licensing health care facilities.

The minimum standards adopted by the state fire marshal do “apply to municipal, county, state and private buildings, unless otherwise provided by statute.” However, they do not apply to any building within a local government, other than state buildings or educational occupancies, for which certification has been made in writing to the state fire marshal that

1. It has adopted
  - a. The International Building Code published by the International Code Council; and
  - b. Either the International Fire Code published by the International Code Council or the Uniform Fire Code published by the National Fire Protection Association.
2. It is adequately enforcing its own code and is performing any reviews of construction plans and specifications required by the state fire marshal. (The state fire marshal must audit the records of each local government that chooses to enforce its own code at least once every three years to ensure that it is adequately performing its enforcement functions.)

Statewide codes adopted by the state fire marshal apply if

1. The local government’s building construction safety code publications are not current within seven years of the latest edition, unless otherwise approved by the state fire marshal; or
2. After written notice and hearing, the state fire marshal finds that the local government is not adequately performing its enforcement functions.

Amended versions of building and fire codes must afford a reasonable degree of safety to life and property.

Tennessee Attorney General’s opinion dated March 11, 1985, opines that a municipality may not require a county to obtain a building permit for construction of a county building

used in the county's governmental capacity when that requirement is not authorized by statute. T.C.A. §§ 68-120-101 *et seq.* are ambiguous with respect to such a requirement. However, it does appear to be the intent of T.C.A. §§ 68-120-101 *et seq.* that municipal building and fire codes that meet the requirements of that statute and of Rule 0780-2-2 apply to municipal, county, state and private buildings. If for some reason the municipal building and fire codes did not apply, presumably, municipal fire prevention officials in their capacities as assistants to the state fire marshal under T.C.A. § 68-120-108 could enforce against municipal, county, state, and private buildings the statewide building construction safety standards adopted by the state fire marshal.

## Inspectors

### ***Certification of Building and Fire Inspectors***

Since June 30, 1995, all existing municipal and county inspectors in Tennessee have had to be certified by the state fire marshal before enforcing building and fire codes. Any inspector hired after July 1, 1994, has 12 months from the date of employment to receive certification, which is valid for three years. Exemptions apply to people who are

- 60 years old and have been continuously employed as a building inspector for seven years; or
- 50 years old and have been employed as a building inspector for one year and were licensed by the state as an electrical, plumbing, or heating/air conditioning contractor before July 1, 1993.

The state fire marshal sets the certification standards, but he or she must accept certification from the Southern Building Code Congress International, the International Code Council, and the National Fire Protection Association as satisfying standards. The fire marshal is to provide training courses, issue identification cards, and revoke certification of inspectors who fail to enforce codes properly (T.C.A. § 68-120-113).

### ***Shared Inspectors***

T.C.A. § 6-54-116 applies to cities with populations of less than 25,000 and provides: "It shall be lawful for two or more municipalities, none of which exceeds 25,000 in population, to engage jointly one building inspector and to make an agreement specifying how such inspector shall be paid for his services and how his time or services shall be allocated to the respective municipalities." T.C.A. § 68-102-107 allows certified building and fire safety inspectors to perform inspections for local governments other than the one by which they are employed.

### ***Workers' Compensation Coverage Prerequisite to Issuing Permit***

Officials who issue building permits are required to make sure contractors have a certificate of compliance, a certificate of insurance, a workers' compensation policy, or a number from a certificate of compliance from the Department of Labor, or other

evidence of workers' compensation coverage before issuing a permit (T.C.A. § 13-7-211).

### ***Administrative Inspection Warrants***

T.C.A. § 68-120-117 authorizes the issuance of an administrative inspection warrant when an owner or person in charge of premises refuses consent to an inspection to determine compliance with safety codes or ordinances. The building official requesting the warrant must be certified under T.C.A. § 68-120-113. Any judge of a court of record or other official authorized to issue a search warrant may issue the administrative inspection warrant.

## Regulation of Contractors

### ***Licensing***

T.C.A. §§ 7-62-101 *et seq.* allow municipalities and counties to license “residential, commercial, or assembly builders and residential, commercial, and assembly maintenance and alteration contractors.” However, municipalities and counties are prohibited from imposing upon HVAC, plumbing, and electrical contractors any licensing requirements (i.e., tests, examinations, etc.) other than state requirements (T.C.A. § 7-62-104(7)). Municipalities and counties also are prohibited from discriminating against a state licensee based on nonresidency in the municipality or county (T.C.A. § 62-6-111(i)(2)(c)).

### ***Contractors' Permits***

An optional general law available for adoption by ordinance authorizes an unlimited number of building permits for general home repairs and improvements to be issued to state-licensed contractors. No more than 10 active permits may be issued to certain unlicensed contractors (T.C.A. §§ 7-62-201 *et seq.*).

A building permit official must advise any permit applicant of the provisions of this law if it has been adopted by ordinance by the city (T.C.A. §§ 7-62-201 *et seq.*).

## Fire Prevention

Municipal fire prevention and building officials, fire chiefs, and mayors of cities without fire departments are given “concurrent jurisdiction” to enforce the provisions of the basic law for the state fire marshal’s authority, which is T.C.A. §§ 68-120-101 *et seq.* This chapter supersedes “all less stringent provisions of municipal ordinances” (T.C.A. § 68-120-106).

A fire inspector may issue a citation when a property owner fails to comply with a written order by the inspector to remedy an inherently dangerous building or a building containing flammable matter. The inspector or district attorney also may file a petition for an injunction against any person responsible for a dangerous or defective building

(T.C.A. § 68-102-117). In incorporated cities or places having either a fire marshal or a fire department, the city will appoint either the fire marshal or the fire chief as an assistant to the commissioner of Commerce and Insurance, subject to his or her direction and the duties and obligations imposed upon the commissioner. In cities with no fire marshal, a fire marshal from another local government may be an assistant to the state commissioner on behalf of that city (T.C.A. § 68-102-108).

Smoke detectors that are required in one- and two-family dwellings must be installed in accordance with the 2003 Residential Code published by the International Code Council and the manufacturer's instructions unless these conflict with applicable codes adopted by the fire marshal. Smoke detectors may be battery operated when installed in dwellings without commercial power (T.C.A. § 68-102-151 and 68-120-111).

## Measures for Protection of the Public

### ***Theaters***

It is the duty of the "corporate authorities of any city or town" to examine theaters and other public entertainment facilities to determine if all necessary safeguards are provided to avoid "accident by fire or panic." If such facilities are deficient in any respect, it is likewise their duty to require "such alterations as will [promote] the public safety." Plans for such buildings must be approved by the "proper municipal authorities" before construction begins, and failure to make prescribed alterations will result in license forfeiture and building closure (T.C.A. § 68-101-102).

### ***Public Garages in Buildings Occupied for "Habitational Purposes"***

State law contains detailed prescriptions for constructing a public garage as part of a building used for "habitational purposes" and deals with fire walls, fireproof materials, sprinklers, etc. (T.C.A. § 68-16-103(a)).

### ***Energy Conservation in New Buildings***

The state legislature adopted by reference the code for energy conservation published by the National Conference of States on Building Codes and Standards as the "minimum requirements for effective use of energy in new buildings." Local jurisdictions have the option of adopting the 2000 International Energy Conservation Code with 2002 amendments, published by the International Code Council, rather than enforcing the code adopted by the state. Amendments to these codes cannot become effective until approved by the General Assembly or one of its committees. The code adopted applies to "... new buildings and structures or portions thereof and additions to existing buildings that provide facilities or shelter for public assembly, educational, business, mercantile, institutional, storage, and residential occupancies, as well as those portions of factory and industrial occupancies designed primarily for human occupancy."

Nonresidential farm buildings, temporary buildings used exclusively for construction, and other specifically listed uses are exempted. Apparently, one of these codes must be

adopted and enforced by all local governments, even if the local government has not otherwise adopted or enforced other building codes (T.C.A. §§ 13-19-101 *et seq.*).

A municipality may charge a fee to cover administrative costs of enforcing this code. The fee “may not accrue to the general revenue of the local government or by any other application become subject to laws regulating local taxation” (T.C.A. § 13-19-107).

### ***Handicapped Access***

The local building inspector is responsible for requiring construction, enlargement, or substantial alteration of new public buildings to meet the minimum specifications in the 2002 North Carolina Accessibility Code with 2004 amendments, the Uniform Federal Accessibility Standards, or the Americans with Disabilities Act Accessibility Guidelines. This responsibility is shared with the State Building Commission for state buildings and with the state fire marshal for buildings subject to his or her review. These requirements apply to buildings constructed by local governments and other publicly used buildings, such as theaters, restaurants, hotels, factories, office buildings, stadiums, hospitals, voting areas, shopping areas, and convention centers. Provision is made for waivers under specified limited circumstances, and local governments are exempted from fines or penalties for noncompliance (T.C.A. § 68-120-201–205).

Also, the Americans with Disabilities Act requires local governments to comply with either the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines in constructing or substantially altering any building, facility, or structure.

## **Code Enforcement**

### ***Model Building Codes, Utility Codes, Etc.***

T.C.A. § 6-54-119 requires municipalities to retain as a public record a copy of standard model codes they adopt. (See discussion of adoption of model codes in Chapter 4, “Ordinances and Codes.”) State law requires that citations for violations of standardized model codes contain a notation identifying specifically where a copy of the code is located and the hours during which it may be inspected (T.C.A. §§ 6-54-501 *et seq.*).

### ***Modular Building Standards***

The commissioner of Commerce and Insurance is empowered to set standards for constructing and installing modular building units and to provide for their inspection. No local standard relative to modular building units shall be effective unless it is identical to one established by the commissioner. A city may make inspections and charge a fee only if the local standard is identical. The fee must be equal to the fee for similar inspections of conventional housing. Any modular building unit bearing an approval insignia issued by or on behalf of the commissioner shall be deemed to comply with any local standard. Local zoning requirements, fire zones, subdivision control, and aesthetic requirements are reserved to cities, but they must be reasonable and uniformly applied.

The commissioner may delegate inspection authority to local governments (T.C.A. § 68-36-303–304).

### ***Lot Cleanup***

Cities may require owners who do not occupy their lots to clean up the property where trees, vines, grass, and brush are growing or trash and debris are accumulating. If an owner fails to clean up within 10 days after receiving notice to do so, the city may clean up the lot and assess the costs against the owner. The costs are collected with the lot's property tax bill and filed as a lien on the property. The municipality also may collect these costs in an action for debt filed in a court of competent jurisdiction (T.C.A. § 6-54-113).

### ***Slum Clearance***

T.C.A. §§ 13-21-101 *et seq.* provide authority for municipalities to adopt ordinances relating to structures within the city that are unfit for human occupation or use. The statute requires that the ordinance designate a public officer to exercise the ordinance's prescribed powers. Upon his or her own motion, a petition filed by five citizens, or the governing body's request, this officer may serve the owner with a complaint and notice of a public hearing to be held not less than 10 days or more than 30 days from the date the complaint is served. Following the hearing, the officer may order the owner to either repair or demolish the structure.

If the owner fails to comply with the order, the officer may undertake the repair or demolition and assess those costs against the owner. The sum owed, upon being certified to the municipal tax collector, becomes a lien on the property. A notice of lien should also be filed with the register of deeds. The costs, which may include reasonable fees for registration, inspections, and professional evaluations in addition to the costs of repairs, alterations, improvements, vacating and closing, and removal or demolition, shall be collected by the municipal tax collector or county trustee at the same time and in the same manner as property taxes. These costs also may be collected in an action for debt filed in a court of competent jurisdiction.

### ***Notification that Property Is Downstream of a Dam***

T.C.A. § 69-12-127 requires local governments that issue building permits to inform an applicant when the proposed construction or alteration is located downstream of a dam and would be affected by failure of the dam. The Department of Environment and Conservation must provide each county executive with an inventory of dams in the county, and the county executive must provide it to municipalities that issue building permits. The executive officer of the municipality must provide it to the building official.



## Chapter Twenty-Two

# Planning and Zoning

### Types of Planning Commissions

Planning commissions may be structured as municipal planning commissions or as regional planning commissions. Unincorporated communities may create community planning commissions (T.C.A. § 13-3-101–105, T.C.A. § 13-3-201–203, T.C.A. § 13-4-101–105).

#### ***Municipal Planning Commissions***

A municipal planning commission is to be composed of five to 10 members determined by the “chief legislative body.” One member is to be the mayor or someone designated by the mayor, and one is to be a member of the “chief legislative body” and selected by that body. The remaining members are to be appointed by the mayor. Appointment terms must be arranged so that one member’s term expires each year. All members are to serve without compensation. The mayor has authority to remove any appointed member “at his pleasure” (T.C.A. § 13-4-101).

This legislation is supplemental to and does not supersede private acts (T.C.A. § 13-4-105).

A planning commission may

- Make reports and recommendations to the governing body about community development (T.C.A. § 13-4-103);
- Recommend building and financing programs for public improvements (T.C.A. § 13-4-103);
- Require public officials to furnish requested information (T.C.A. § 13-4-103);
- Adopt an official general plan for the municipality’s physical development (T.C.A. § 13-4-201–203);
- Before construction, approve the location and extent of streets, parks, public spaces, public buildings and structures, and public and private utilities (T.C.A. § 13-4-104);
- Adopt and administer subdivision regulations (T.C.A. § 13-4-302–308); and
- Certify a zoning plan to the governing body (T.C.A. § 13-7-202).

#### ***Single or Multicounty Regional Planning Commissions***

The Tennessee Department of Economic and Community Development, with approval of the Local Government Planning Advisory Committee (LGPAC), may create and define the boundaries of planning regions. If a municipality elects to be included in a planning region, the commissioner of the Department of Economic and Community Development shall appoint a regional planning commission of not fewer than five or more than 15 members from nominations by the chief elected officials of the county and the municipality (T.C.A. § 13-3-101, T.C.A. § 4-3-727).

Members of the county and municipal legislative bodies may serve on the commission, but their number must be less than a majority. They serve during their respective elected terms, and other citizen members are appointed for staggered four-year terms. Commission members may be removed only for cause and only after a due process hearing. County and municipal governing bodies participating in this type of regional planning commission may establish the compensation for each member nominated by that local government (T.C.A. § 13-3-101).

Such a commission functions as a planning and advisory body for counties and cities within the region. A municipality's legislative body may designate the regional planning commission to act as the municipal planning commission. A prime mission of the regional planning commission is to prepare and maintain a regional plan. Any parts of such a plan approved by a municipal legislative body have the same force and effect as a plan prepared by a municipal planning commission (T.C.A. § 13-3-301).

### ***Municipal Regional Planning Commissions***

At the request of a municipality, the Department of Economic and Community Development may, with the LGPAC's approval, establish a planning region composed of a municipality that has created a planning commission and a territory no more than five miles beyond the municipality, but no farther than the municipality's urban growth boundary. It may designate the municipal planning commission a regional planning commission (T.C.A. § 13-3-102, T.C.A. § 4-3-727).

### **Training for Members of Planning Commissions, Boards of Zoning Appeals, and Staff**

Members of planning commissions and boards of zoning appeals must attend a minimum of four hours of training in planning and zoning subjects within one year of their initial appointment and in each calendar year afterwards. Full-time or contract professional planners, building commissioners, and administrators must attend eight hours of similar training each calendar year. A municipality may, by ordinance, opt out of these training requirements (T.C.A. § 13-3-101, T.C.A. § 13-4-101, T.C.A. § 13-7-205).

### **Public Works Projects**

After a municipal planning commission adopts a comprehensive plan, no public works (public parks, buildings, structures, or public utilities) may be "constructed or authorized" unless the governing body or board (including the governing body or board of the state's political subdivisions, such as county commissions) first asks for the planning commission's approval of the public facility's location. If the planning commission disapproves, the commission must communicate its reasons to the governing body, board, or official having jurisdiction over the project. The governing body, board, or official may overrule the planning commission and construct the facility (T.C.A. § 13-4-

104).

## Subdivision Regulation

Subdivision plats must be submitted to the planning commission by the owner of the property, the holder of a written option or contract to purchase, or the attorney or authorized representative of any of these (T.C.A. § 13-3-402(a), T.C.A. § 13-4-302(a)).

“Subdivision” means

- Dividing a tract or parcel into two or more lots, sites, or other divisions requiring new street or utility construction; or
- Any division of five or fewer acres for sale or building development (T.C.A. § 13-3-401, T.C.A. § 13-4-301).

Except in Davidson, Hamilton, and Knox counties, curbs, gutters or sidewalks may not be required in a subdivision outside the limits of a municipality in an area governed by a regional planning commission unless public water and sewage systems are available within 18 months after a subdivider requests plan approval (T.C.A. § 13-7-301).

Plats submitted to a regional planning commission may be approved by the commission’s secretary if the subdivision has only two lots and meets all subdivision requirements (T.C.A. § 13-3-402).

In an area governed by a regional planning commission, it is a Class C misdemeanor for owners or their agents to sell or transfer land by reference to an unapproved subdivision or plat. The county attorney or other official designated by the county commission may file an injunction against such a transfer (T.C.A. § 13-3-410).

## Zoning

A municipality’s “chief legislative body” is empowered to adopt and amend a zoning ordinance. The adoption process requires a public hearing preceded by a newspaper notice of at least 15 days (T.C.A. § 13-7-203).

The zoning ordinance may “regulate the location, height, bulk, number of stories, and size of buildings and other structures; the percentage of the lot that may be occupied; the sizes of yards, courts, and other open spaces; the density of population; and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, and other purposes ...” and establish special districts or zones “subject to seasonal or periodic flooding ... and such regulations may be applied therein as will minimize danger to life and property.” Zoning regulations may provide for the transfer of development rights under procedures and restrictions set out in T.C.A. § 13-7-201(a)(2).

The municipal planning commission is responsible for certifying to the governing body a zoning plan, the text of a zoning ordinance, and zoning maps. Any change in the

ordinance, including the zoning map, must be referred to the planning commission for approval. The planning commission's disapproval may be overridden by a majority vote of the entire legislative body. The same procedure applies to any zoning ordinance amendment (T.C.A. § 13-7-201–204).

The “chief legislative body” may provide for a board of zoning appeals of three to five members or designate the municipal planning commission to act in this capacity. The board of zoning appeals is authorized to grant exceptions that are “in harmony with [the] general purpose and intent” of the zoning ordinance and “to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions as they arise in the administration of the zoning regulations.” In addition to those taken by aggrieved persons, appeals may be taken to the board of zoning appeals by an affected “officer, department, board, or bureau of the municipality” (T.C.A. §§ 13-7-201 *et seq.*).

These general law provisions supplement, but do not supplant or modify, any private acts for a particular city. General law provisions regarding zoning powers and procedures apply to the extent that they are not in conflict with such private acts. The most restrictive regulations control any conflict with respect to width or size of yards, courts, or other open spaces; height and number of stories or buildings; and density (T.C.A. § 13-7-209).

### Zoning and Subdivision Regulation Outside City Limits

If a municipal planning commission has been designated as a regional planning commission, the city may exercise zoning powers beyond its boundaries up to and including its growth boundary if the county is not exercising such zoning power. The state code specifies procedural requirements for public hearings and notice to the county of its intent to exercise zoning authority outside its corporate limits. City zoning is nullified when the county exercises its zoning powers (T.C.A. § 13-7-302–306).

Several sections of *Public Acts 1998, Chapter 1101*, affect municipal zoning and subdivision authority outside municipal limits. Two of them amend T.C.A. § 13-3-102 and T.C.A. § 13–3-401(2), which are part of the statute that governs the authority of regional planning commissions. Read together, they appear to limit the jurisdiction of regional planning commissions outside municipal limits to the territory within the urban growth boundary (when one has been established by adoption of the growth plan). Another is codified in T.C.A. § 6-58-106(d), and provides that

*Notwithstanding the extraterritorial planning jurisdiction authorized for municipal planning commissions designated as regional planning commissions in title 13, chapter 3, nothing in this chapter shall be construed to authorize municipal planning commission jurisdiction beyond an urban growth boundary; provided, that in a county without county zoning, a municipality may provide extraterritorial zoning and subdivision*

*regulation beyond its corporate limits with the approval of the county legislative body.*

Disagreement exists on the effect the last clause in T.C.A. § 6-58-106(d) has on the authority of municipal planning commissions designated as regional planning commissions to adopt zoning and subdivision regulations outside their municipal limits but within the urban growth boundary, absent the approval of the county legislative body.

## Limits on Zoning Authority

### ***Group Homes for Handicapped***

T.C.A. §§ 13-24-101 *et seq.* “[take] precedence over any ... ordinance to the contrary” and provide that a home for up to eight mentally retarded, mentally handicapped, or physically handicapped people and two additional people acting as house parents or guardians may be maintained in any area zoned for “single-family residence” use. Such homes “operated on a commercial basis” are excluded.

### ***Factory-constructed Homes***

A dwelling may not be excluded from a residential zone solely because it was partially or completely constructed in a manufacturing facility. This provision does not apply to “factory-manufactured mobile homes constructed as single, self-contained units and mounted on a single chassis” and as further defined in T.C.A. § 68-126-202 (T.C.A. § 13-24-201).

### ***Telephone Facilities***

T.C.A. § 13-24-301–303 provide that

*No municipal, county, or regional planning commission or any municipal or county legislative body shall by ordinance or otherwise exclude the location or relocation of any facility used to provide telephone or telegraph services to the public. ... Such facilities shall include those essential to the provision of telephone and telegraph services, such as central office exchanges and microwave towers, that require a specific location in order to provide the most efficient service to the public. ... The exclusion of location from local regulation shall not preclude the exercise of reasonable municipal and county police powers including but not limited to permit requirements, landscaping, off-street parking, or setback lines as an exercise of police powers.*

### ***Feedlots, Dairy Farms, and Egg Production Houses***

T.C.A. § 44-18-104(c)(4) exempts these enterprises from zoning restrictions or other regulations that take effect after they commenced operations and prior to their being annexed by a city.

### ***Historic Zoning***

A county or municipality may create a special historic zoning commission of five to nine members to have jurisdiction over historic sites and buildings. The state code also provides a mechanism for creating a regional historic zoning commission (T.C.A. § 13-7-401–409).

As part of their historic zoning regulations, municipalities may enact ordinances that prohibit a property owner from allowing a building within a historic zone from deteriorating to the extent that it suffers “demolition by neglect” (T.C.A. § 13-7-407).

### ***Conservation Easements***

Cities may designate and purchase conservation easements over property listed on the National Register of Historic Places or the Tennessee Register (T.C.A. § 66-9-305).

### ***Sport Shooting Ranges***

The right to operate a sport shooting range may not be terminated or restricted because of changing use of adjacent or surrounding properties when the range was issued permission to operate by an entity having zoning authority (T.C.A. § 39-17-316).

### ***Continuation of Nonconforming Business Uses***

T.C.A. § 13-7-208(b)-(d) allows the continuation, expansion, and reconstruction of business, commercial, and industrial establishments that existed legally before a zoning enactment made them nonconforming. This grandfathering protection for these uses ends if the establishment ceases operation for 30 continuous months. The burden is on the municipality to show that the property owner intentionally and voluntarily abandoned the nonconforming use.

Any structure rebuilt on the site of the nonconforming use must conform to existing zoning requirements for setbacks, height, bulk, and physical location of a structure.

This statute also places limits on the expansion of nonconforming off-site signs. An off-site sign, however, does not preclude any new or additional conforming use on the property on which the sign is located or on adjacent property under the same ownership.

Provisions in the statute establishing the 30-month abandonment period that ends grandfathering protection, that require rebuilt structures to conform to existing zoning restrictions, and that limit expansion of off-site signs do not apply to home rule cities, but they may opt into them.

### ***Wireless Cell Towers***

State law recognizes the ability of municipalities that have adopted planning and zoning regulations to regulate the siting of wireless cell towers, but prohibits: (1) regulating the placement of an antenna or related equipment on an existing tower unless this would

require an extension that would require lighting or exceed the municipality's height limitation, (2) considering a co-location an expansion and imposing additional costs or operating restrictions in a co-location unless the tower is owned by the municipality, or (3) requiring an applicant to provide any justification for radio frequency need (T.C.A. § 13-24-304, 305).

# Countywide Growth Plan, Annexation and Boundary Adjustments, and Dissolution

## Countywide Planning

A comprehensive growth policy plan that outlines anticipated new development during the next 20 years is required in each county. The initial draft of the growth plan is formulated by a coordinating committee whose members include representatives from the county, municipalities, utilities, schools, chambers of commerce, soil conservation districts, and other entities. The county and cities may propose boundaries for inclusion in the plan. After the growth plan is developed, the committee conducts public hearings and submits the plan to each city and county government for ratification. The committee may revise the plan upon objection from these local governments. If the governmental entities cannot agree on a plan, any one of them may petition the secretary of state to appoint a dispute resolution panel of administrative law judges to settle the conflict. Once adopted by the July 1, 2001, deadline, a plan may not be amended for three years except in unusual circumstances. The amendment process is the same as that for initial adoption (T.C.A. § 6-58-104).

The plan identifies three distinct types of areas

- Urban growth boundaries (UGB)—areas that contain the corporate limits of a municipality and the adjoining territory where growth is expected;
- Planned growth areas—areas outside incorporated municipalities where growth is expected (if there are such areas in the county) and where new incorporations may occur; and
- Rural areas—territory not within one of the other two categories that is to be preserved for agriculture, recreation, forest, wildlife, and uses other than high-density commercial or residential development (T.C.A. § 6-58-101).

## ***Annexation***<sup>3</sup>

Municipalities are empowered to annex territory by ordinance or by referendum (T.C.A. § 6-51-101–114). Public Acts 1998, Chapter 1101, made substantial changes to the law governing annexation, based on whether the annexation occurs before or after adoption of the countywide growth plan required in that act.

Before Adoption of the Growth Plan (T.C.A. § 6-58-108)

### ***Annexation by Ordinance***

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<sup>3</sup>For specific annexation procedures, forms, and checklists, see the [Annexation Handbook](#) published by MTAS.



Annexation by ordinance is preserved with certain limitations that generally relate to the right to contest annexations. There are two methods for contesting an annexation ordinance before adoption of the growth plan.

**First Method:** The county legislative body may contest the annexation, but only after completion of the first three of the following events

1. Within 60 days of the final passage of the annexation ordinance the county passes a resolution disapproving the annexation;
2. Within the same 60 days, a majority of the property owners within the territory to be annexed petition the county to contest the annexation. Each parcel is counted only once; a parcel with multiple owners is counted if the majority of the owners petition together. The county property assessor has 15 days after receiving the petition to determine if it represents 50 percent of the property holders. The assessor reports to the county executive and to the county legislative body whether the 50 percent threshold has been met. Successful completion of such a petition gives the county standing to contest an annexation ordinance;
3. The county legislative body may then adopt a resolution contesting the annexation and authorizing a suit. The suit must be filed within 90 days of the final passage of the annexation ordinance. Therefore, the resolution in most cases would need to pass in fewer than 90 days. Even if the petition is filed, the county is not required to file suit;
4. No-jury trial — Cases are tried by chancellor or circuit court judge without a jury; and
5. Burden of proof — The burden of proof is on the county to prove that the annexation is “... unreasonable for the overall well-being of the communities involved,” or that “the health, safety and welfare of the citizens and property owners of the municipality and [the annexed] territory will not be materially retarded in the absence of such annexation.”

**Second Method:** An aggrieved owner of property that borders on or lies within the territory proposed for annexation retains the right to contest the annexation under T.C.A. § 6-51-103 under the following rules

1. A property owner has 90 days to file suit, rather than the 30 days specified in T.C.A. § 6-51-103. NOTE: Notwithstanding the statutory language that gives abutting landowners the right to challenge an annexation, *State ex. rel. Cordova Areas Residents for the Env't v. City of Memphis*, 862 S.W.2d 525 (Tenn. App.1992), held that part of the statute unconstitutional. For that reason, only the owners of property that lies within the territory proposed for annexation have standing to challenge the annexation;
2. Jury trial — Plaintiff is entitled to a jury trial; and
3. Burden of proof — The burden is on the city to prove the reasonableness of the annexation.

### ***Annexation by Referendum***

Cities still are entitled to annex by referendum under T.C.A. § 6-51-104 and 105. However, if there are no residents in the territory, annexation by ordinance must be used, and the county may disapprove or intervene in the process as described above (T.C.A. § 6-58-107).

### After Adoption of the Growth Plan (T.C.A. § 6-58-111)

#### ***Annexation by a City Within its Urban Growth Boundary***

After adoption of the growth plan the county loses its standing to contest annexations based upon the petition of property owners in the territory proposed for annexation.

Within its UGB, a city may use any of the annexation methods provided by Tennessee's annexation law contained in T.C.A. § Title 6, Chapter 51. This includes annexation by ordinance and by referendum, as modified by the new law. As provided in those statutes, aggrieved owners of property that borders or lies within the territory annexed have 30 days to challenge an annexation. (But, see NOTE under "Second Method.")

After adoption of the growth plan the following rules govern challenges to annexations within the urban growth boundary

1. Jury Trial — Cases are tried by a chancellor or a circuit court judge without a jury; and
2. Burden of Proof — The burden of proof is on the plaintiff to prove that the annexation is "... unreasonable for the overall well-being of the communities involved" or that "the health, safety, and welfare of the citizens and property owners of the municipality and [the annexed] territory will not be materially retarded in the absence of such annexation."

The providing of mutual aid or assistance is not admissible against the municipality in either a *quo warranto* suit brought under T.C.A. § 6-51-103 or under the Declaratory Judgment Act (T.C.A. § 6-51-103).

#### ***Annexation by a City Outside its Urban Growth Boundary***

A city may annex territory outside its UGB in either of two ways

1. By obtaining approval of an amendment to its UGB in the same way that the original growth plan was established; or
2. By referendum, under T.C.A. § 6-51-104 and 105.

A municipality has exclusive authority to annex within its UGB. Annexing outside the UGB by referendum is prohibited except in planned growth areas and rural areas (T.C.A. § 6-58-111).

### Restrictions on Corridor Annexations (T.C.A. § 6-58-108(b)(4))

#### ***Before Adoption of the Growth Plan***

Before adoption of the growth plan, “corridor” annexations achieved by annexing public rights of way; easements owned by governmental or quasi-governmental entities, railroads, utility companies, or federal entities (such as TVA, DOE, etc.); or natural waterways are prohibited, except under the following conditions

- The annexed areas also include each parcel of property contiguous on at least one side of the right of way, easement, waterway, or corridor; or
- The city receives approval by the legislative body of the county in which the territory proposed to be annexed is located; or
- The owners of the property at the end of the corridor petition the city for annexation; the owners agree to pay for necessary infrastructure improvements to the property; the property is larger than three acres; the property is located within one and one-half miles of the existing boundaries of the city; and the corridor annexation is not an extension of any previous corridor annexation.

Restrictions prohibiting corridor annexations do not apply to annexation by referendum.

#### ***After Adoption of the Growth Plan***

Restrictions on corridor annexations no longer apply after adoption of the countywide growth plan. Generally, however, T.C.A. §§ 6-51-101 *et seq.* authorize challenges to annexation ordinances by quo warranto suits on the ground of the unreasonableness of the ordinance and require that such challenges be brought within 30 days of the passage of the ordinance. But *State of Tennessee ex rel. Earhart v. City of Bristol*, 970 S.W. 2d 948 (Tenn. 1998), held that the 30-day limitation “does not apply to suits contesting the validity of an ordinance which purports to annex an area that does not include people, private property, or commercial activity and is, therefore, void.” In that case, the plaintiffs were permitted on constitutional grounds to challenge certain “strip” annexations done in 1989, to which the plaintiff’s property was joined to the city by annexation done in 1995.

#### ***Annexation by a City in More Than One County (Before and After Growth Plan Approval) (T.C.A. § 6-58-108(e))***

A city may, by ordinance upon its own initiative, annex only territory within the county in which the city hall is located. There are three primary exceptions

- A municipality located in two or more counties as of November 25, 1997, may annex in all such counties unless the percentage of the city population residing in the county or counties other than the one in which the city hall is located is less than seven percent of the total population of the municipality;
- A municipality may annex in the second county if the legislative body of the county in which the territory proposed for annexation is located approves the annexation by resolution; and
- The city may annex in any county in which, on January 1, 1998, it provided sanitary sewer service to 100 or more residential and/or commercial customers.

These restrictions do not apply to annexation by referendum. After growth plan

approval, any annexation must also conform to the provisions of the growth plans in both counties.

### **Plan of Services (T.C.A. § 6-51-102)**

The plan of services requirements below apply to annexation ordinances that were not final on November 25, 1997. A plan of services is also required for annexations by referendum (T.C.A. § 6-51-104(6)).

#### ***Scope of the Plan of Services***

The governing body of the annexing city must adopt a plan of services that outlines the services to be provided and their timing. The plan must be “reasonable” with respect to both the scope of services and the implementation schedule. The implementation schedule must provide for delivery of services in the new territory that are comparable to those provided to all citizens of the city. The plan must address the following services, whether or not the city currently provides them

- Police and fire protection;
- Water, electrical, and sanitary services;
- Road and street construction and repair;
- Recreational facilities and programs;
- Street lighting; and
- Zoning services.

If the municipality maintains a separate school system, the plan must also include schools and the impact, if any, on school attendance zones. If the municipality does not have a separate school system, the municipality must provide notice to any “affected” school system at least 30 days before the public hearing on the plan of services.

The plan may exclude services that are provided by another public or private agency, other than those services provided by the county. The city may include services in addition to those required.

#### ***Submission to Planning Commission***

Before adoption, the plan must be submitted to the planning commission, which must issue a written report on it within 90 days. The city’s governing body is required to hold a public hearing on the plan after giving 15 days notice in a newspaper of general circulation in the city. The notice must include the locations where at least three copies of the plan are available for public inspection. If the city is in default on any other plan of services it may not annex any other territory.

#### ***Progress Report***

Six months after the plan is adopted and annually until it is fully implemented, the city must publish a report on its progress toward fulfilling the plan and must hold a public hearing on the report. These reporting and hearing requirements apply to any plan of

services that is not fully implemented.

### ***Amending Plan of Services***

A plan of services may be amended under limited conditions

- An occurrence such as a natural disaster, an act of war, terrorism, or other unforeseen circumstances beyond the city's control;
- The amendment does not substantially or materially decrease the type or level of services or delay the provision of such services; or
- The amendment has received written approval by a majority of property owners by parcel in the annexed area.

Before any amendment is adopted, the city must hold a public hearing preceded by at least 15 days notice.

### ***Challenging Plan of Services Before Adoption of Growth Plan***

Before adoption of the growth plan, the county has standing to challenge the reasonableness of the plan of services in the same manner that it is allowed to challenge annexations before adoption of the growth plan. T.C.A. § 6-51-102 does not make it clear whether property owners within the annexed territory have the right to challenge the reasonableness of the plan of services. However, because they have the right to challenge the reasonableness of annexations, presumably they could argue that the annexation is unreasonable on the grounds that the plan of services is unreasonable.

### ***Challenging Plan of Services after Adoption of Growth Plan***

The county loses its right to challenge the reasonableness of the plan of services after adoption of the growth plan. T.C.A. § 6-51-102 does not make it clear whether property owners within the annexed territory have the right to challenge the reasonableness of a plan of services after adoption of the growth plan. However, because they have the right to challenge the reasonableness of annexations, presumably they could argue that the annexation is unreasonable on the grounds that the plan of services is unreasonable. But it is clear that any aggrieved property owner may sue the city to enforce the plan of services after 180 days following the date the annexation ordinance takes effect. The right to sue ends when the plan of services has been fulfilled. A property owner also may challenge the legality of an amendment to the plan of services within 30 days following adoption of the amendment. If an amendment is found unlawful, it is void, and the previous plan of services is reinstated.

### ***Court's Powers with Respect to Plan of Services***

If the court finds the plan of services to be unreasonable or outside the city's powers conferred by law, the city has 30 days to submit a revised plan of services. However, the city may request by motion to abandon the plan of services. In that case, it may not annex by ordinance any part of the territory originally proposed for annexation for 24 months. The city may not annex any territory by ordinance where the court has issued a

decision adverse to a plan of services until the court determines whether the city is in compliance. The court has a duty to issue a writ of mandamus to compel the city to comply with the plan of services, to establish written timetables for the provision of services, and to enjoin the city from further annexations until the services called for in the plan of services have been provided to its satisfaction. The city must pay the costs of the suit if the court finds the city has unlawfully amended a plan or failed to comply with a plan without cause.

### ***Incorporation***

After January 1, 1999, a territory may be incorporated only inside a planned growth area after the growth plan is adopted and only with the county legislative body's approval of the growth boundary and city limits (T.C.A. § 6-58-108). After May 19, 1998, all newly incorporated cities became subject to the following four requirements

- A new city must enact a property tax that raises revenue equal to at least the annual amount the city receives from state-shared taxes;
- The amount of situs-based wholesale beer and local option sales tax revenues generated in the territory on the day of incorporation must continue to be distributed to the county for 15 years, just as if the territory were annexed (see discussion below under "Tax Revenue Implications");
- The city must develop a plan of services similar to that required for annexation; and
- The proposed city must meet the population and distance requirements established in T.C.A. § 6-1-201 and T.C.A. § 6-18-103 (T.C.A. § 6-58-112).

### ***Tax Revenue Implications of Annexation***

When a city annexes territory, the county is "held harmless" for the loss of a portion of tax revenue that was distributed to cities under previous law. Revenue amounts generated in the annexed area by local option sales taxes and wholesale beer taxes that had been received by the county prior to the annexation continue to go to the county for 15 years after the date of the annexation. Any increases in these revenues generated in the annexed area are retained by the annexing municipality. (Note that this does not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.) If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county (T.C.A. § 6-51-115).

### ***Miscellaneous Provisions***

The law requires establishment of a joint economic and community development board to foster communication among all sectors of the community (T.C.A. § 6-58-114, T.C.A. § 7-2-101(4)).

The law also allows the creation of a consolidation commission upon petition of 10 percent of the county's voters. (Previous law required the county and principal city to call for a commission.) The provision also prohibits establishment of any new school system (T.C.A. § 6-58-112).

The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) is charged with monitoring the implementation of Public Act 1101 and reporting its findings and recommendations to the General Assembly (T.C.A. § 6-58-113).

[NOTE: Large portions of the previous sections were reprinted from *Growth Policy, Annexation, and Incorporation Under Public Act 1101 of 1998: A Guide for Community Leaders*, a joint publication by the County Technical Assistance Service, the Municipal Technical Advisory Service, the Center for Government Training, and TACIR.]

### ***Lawsuit Venue***

A suit contesting annexation of territory in a county other than the one in which the municipality's city hall is located must be filed in the county where the city hall is located. The chancellor must then change the venue to a county adjacent to either the county where the city hall is located or the county where the proposed annexed territory is located (T.C.A. § 6-51-103(g)).

### ***Effect of Annexation on Existing Utilities***

See Chapter 16, "Utilities."

### ***Boundary Adjustment***

Two contiguous cities may adjust a common boundary by contract to eliminate confusion and uncertainty about its location or to conform the boundary to a terrain feature. Several compliance conditions are contained in T.C.A. § 6-51-302.

### ***Contraction of Boundaries***

A city may contract its boundaries by ordinance after notice and public hearing, providing such action is approved by a majority of the total membership of its governing body. If 10 percent of the voters in the de-annexed area sign a protest petition, a referendum must be held in the area within 75 days. A majority vote determines the result. Another procedure for contraction requires approval by a three-fourths majority in a referendum, but whether this is to be held in the entire city or only the area affected is not specified (T.C.A. § 6-51-201–204).

### ***Dissolution***

A city organized under any general law may be dissolved by a majority of the votes in a referendum on the question in response to a petition signed by 10 percent of the city's registered voters. At least two years must expire between holding such referenda (T.C.A. §§ 6-52-201 *et seq.*).

The general law city manager-commission and modified city manager-council charters specify a higher percentage of a city's registered voters for a valid petition; whether this would prevail over the 10 percent requirement of the other law is uncertain (T.C.A. § 6-18-108, T.C.A. § 6-30-104).

Another statute provides for a special tax levy by the county to pay any indebtedness when a municipality is abolished and no new charter is granted and no reincorporation takes place. It also provides for succession if the municipal corporation is later resurrected in a new form (T.C.A. §§ 6-52-101 *et seq.*).

Formerly, cities organized under private acts could be abolished by private acts of the legislature, but this procedure became unconstitutional in 1953 with passage of the Seventh Amendment. This includes a provision that “the General Assembly shall by general law provide the exclusive methods by which municipalities may be ... dissolved.” There is no general law authorizing private act municipalities to dissolve, with the exception of the procedure in T.C.A. §§ 6-52-401 *et seq.* That statute provides that the charter of a city of 100 or fewer inhabitants (according to the latest federal census) may be declared forfeited by a chancery court if the city has not held elections, levied property taxes, expended funds, or adopted a budget for a period of years.

### ***Merger of Municipalities***

Two contiguous municipalities in the same county may merge if a referendum approving the merger passes in both cities. The referendum may be initiated by a joint resolution of the two city councils or by a petition of 10 percent of the registered voters in each municipality. The resolution or petition must state the name of the new municipality and under what charter it will operate. The merger takes place 120 days after the referendum passes and new officials to govern the merged municipalities have been elected (T.C.A. §§ 6-51-401 *et seq.*).



## Chapter Twenty-Four

# Airports

### State Department of Transportation Assistance

Engineering and other technical assistance is available from the state Department of Transportation to any city or group of cities requesting help with planning, acquiring, constructing, improving, maintaining, or operating airports (T.C.A. § 42-2-203(a)).

#### ***Funding Assistance***

The department may give loans, grants, or both to any city or group of cities. Such funds are for planning, acquiring, constructing, improving, maintaining, or operating an airport that is owned or controlled by a city or group of cities (T.C.A. § 42-2-203(b)).

The department also is authorized to act as agent for a city or group of cities to obtain and disburse federal money and other public and private funds to finance municipal airports. It must act as a municipality's agent for certain federal funds, but this is optional if the municipality's airport has a minimum of 25,000 originating takeoffs annually. At the request of a city or group of cities, the department also may act as agent in contracting and supervising airport construction, improvements, maintenance, or elimination of hazards, regardless of the size of the facility (T.C.A. § 42-2-203(c), T.C.A. § 42-2-223, T.C.A. § 42-5-119).

### Governing of Airports

#### ***Airport Officer or Board***

Authority for planning, constructing, and operating an airport may be transferred by resolution of a city's governing body to an airport officer or board. However, the facility remains the city's responsibility (T.C.A. § 42-5-112).

#### ***Joint Operations***

One city may help another city or group of cities develop or operate an airport through a gift of land or personal property, or by a lease or loan with or without interest (T.C.A. § 42-5-121). Any two or more public agencies (including cities) may agree to jointly develop and operate an airport facility. An ordinance or resolution should specify the agreement's duration, the proportionate interest each agency has in the airport property, the proportionate cost to be borne by each agency, conditions for terminating the agreement, methods for disposing of jointly owned property, and liability for unpaid indebtedness.

A board may be established with members appointed by the participating public agencies. The board's size and the members' terms and compensation should be prescribed in the joint agreement. The board has the power to develop, operate, and police the airport facilities in the names of the participating agencies. The board's

budget is subject to approval by the cooperating governing bodies, and the cooperating governing bodies must give their approval before the board can exceed its budget, dispose of any property, or adopt any policing regulations. Eminent domain proceedings may be instituted only by authority of the cooperating governing bodies (T.C.A. § 42-5-201–205).

### ***Airport Authorities***

Any city may establish a municipal airport authority by ordinance and appoint between five and 11 commissioners. Before the authority can become operative, it must apply for and be granted a certificate of incorporation by the secretary of state. A regional authority may be created by resolutions passed by two or more cities, provided a public hearing is held in each municipality. Each city and county appoints two members, and the airport commissioners appoint an extra member. If they cannot agree on the additional member, that member is named by the governor.

City participation in the authority may be increased or decreased with consent from the authority commissioners and holders of at least 60 percent of any outstanding bonds. An amended certificate must be obtained from the secretary of state for any change in an authority.

Authority commissioners may receive no compensation for service, but they are entitled to be reimbursed for expenses they incur. An executive director and other technical and supporting personnel may be employed. For legal services, the authority may either use the city's attorney or employ its own counsel.

An airport authority has all the powers that could be exercised by a municipality operating an airport except levying and collecting taxes or special assessments (T.C.A. § 42-3-101–119).

T.C.A. §§ 42-4-101 *et seq.* create and govern metropolitan airport authorities.

### ***Funding of Airport Development and Operation***

A municipality is authorized to levy and appropriate taxes or other funds for airport development and operation. If the amount is in excess of any charter limitation, the tax levy must be approved by a majority of the city's voters unless the levy is for retiring bonds.

Airport costs may be partially or fully funded from the proceeds of bonds issued by the city. Any fees, rents, or other revenues pledged as security for bonds and fixed by the terms of a contract or lease may not be revised during the term of the lease or contract except as provided in that document (T.C.A. § 42-5-114–115).

Revenues received by the city from operating or selling an airport may be used for any municipal purpose (T.C.A. § 42-5-118).

## Airport Construction and Expansion

### ***Authority to Use City Resources***

Any city may use public funds to plan, establish, develop, construct, enlarge, improve, equip, operate, regulate, protect, and police airports and air navigation facilities, whether or not they are inside city boundaries. A city may use land it already owns, or a city may acquire land through purchase, gift, lease, or eminent domain. Land also may be acquired for aviation easements and/or to remove or protect against airport hazards. County approval is required before a city may acquire property outside its corporate limits by eminent domain for an airport (T.C.A. § 42-5-103).

A city also may acquire existing airport or air navigation facilities by any of the above means. However, if the facility is owned or controlled by the state or other public agency, it may not be taken over without that agency's consent (T.C.A. § 42-5-104).

The city may not be prevented from going onto the land in question to conduct surveys and other examinations relating to the proceedings. It may take possession of the land any time after initiating proceedings and may abandon such proceedings any time before a final decree is entered (T.C.A. § 42-5-108).

### ***Annexation of Airport Property***

If three or more municipalities and counties jointly create a regional airport commission and the regional airport property is not located within a municipality's boundary, no municipality may annex any regional airport property without the prior consent of the legislative bodies of the participating municipalities and counties (T.C.A. § 6-51-117).

The property of an airport with regularly scheduled commercial passenger service that is in a county rather than in the creating municipality is an annexation-free zone unless the annexation is approved by the governing body of the creating municipality (T.C.A. § 6-58-116).

### ***Construction Over Public Waters or Submerged Lands***

Municipal airports may be established on any public waters, submerged lands, or reclaimed lands within or bordering the city's territorial limits (T.C.A. § 42-5-105).

## Airport Zoning Regulations

Cities must prevent and eliminate airport hazards (structures, trees, or land uses obstructing air space) because they endanger both public safety and the public's investment in airports. In exercising this authority, a city must adopt and enforce zoning regulations for airport hazard areas within city boundaries. If a city cannot eliminate existing hazards under its police powers, it may do so "by purchase, grant, or condemnation" of real property (T.C.A. § 42-6-112–113).

When municipally owned airports are outside city boundaries, the city and the county

may develop joint regulations, or the county may, by resolution, authorize the city to adopt regulations. If the city feels county regulations are not adequately enforced, or if the county fails to adopt regulations, the city may adopt and enforce airport zoning regulations with state approval. If county and city regulations conflict, those approved by the city will be in effect (T.C.A. § 42-6-103).

Airport zoning plans must be certified by the state Department of Transportation and by the city or regional planning commission before they become effective (T.C.A. § 42-6-105).

The procedure for adopting airport zoning regulations is much the same as for other zoning regulations. A public hearing must be conducted before an ordinance is enacted or amended. Notice of the time and place of the hearing must be published in a general circulation newspaper at least 15 days before the hearing. An ordinance may not be amended without approval of the agencies originally certifying the ordinance. If the ordinance amendment is disapproved by those agencies, it still may be adopted by a favorable vote of a majority of the entire membership of the city council (T.C.A. § 42-6-105–107).

A board of zoning appeals shall be established by the city council, which determines the method of appointing the three or five members and fixes their terms and compensation. If the city already has a board of zoning appeals, it may be designated to hear appeals of airport zoning regulations under the terms and conditions contained in T.C.A. § 42-6-108–109.

### ***Permits for Structures Near Airports***

Local zoning regulations generally control erecting structures near airports. However, state permits are required when local zoning has not been adopted to protect airspace around airports from tall structures and under certain other conditions (T.C.A. § 42-2-227).

### **Operation and Use Agreements**

Provided the public interest is protected, a city may enter into contracts, leases, agreements, grants, or other arrangements for use of all or part of its airport by a person or persons for a term not to exceed 50 years unless other limitations are included in any loan or grant agreements. If the city operates the facility, the city establishes the terms and conditions of any agreements and fixes uniform charges, fees, or rentals for the privileges, services, or uses of the buildings (T.C.A. § 42-5-110(a)).

A city may contract with one or more persons to operate the airport as an agent for the city for a period not to exceed 50 years (T.C.A. § 42-5-110(b)).

The city may put liens on personal property to force payment for any charges, repairs or

improvements the city makes on it (T.C.A. § 42-5-111).

## Miscellaneous Provisions

### ***Restrictions on Charges for Use of Airports***

A city or airport authority may not require payment of a license fee, tax, or other charge for any public use (landing or taking off) of an airport by planes weighing up to 12,500 pounds unless the aircraft is used by “regularly scheduled aeronautics.” However, a charge may be made for storing aircraft overnight, and a tax or fee may be collected for selling aviation fuel. Metropolitan airport authorities are exempted from this law, and the Department of Transportation may exempt others “for good cause shown” (T.C.A. § 42-2-107).

### ***Disposing of Airport Property***

Unless there are specific limitations included in grant or loan agreements, a city must sell or lease an airport or any portion of it in accordance with state laws or the city charter. If the facility is transferred to another governmental unit, however, disposal is on terms that are in the city’s best interests (T.C.A. § 42-5-109).

### ***Regulations***

When a city acquires or establishes an airport, the local governing body may adopt ordinances and/or regulations to manage the facility and establish penalties for violations whether or not the airport is within the city’s boundaries. The city also may appoint airport guards with full police powers to enforce its regulations. The airport is under the full control of the owner-city, but regulations adopted by the city must conform to state and federal laws and standards. An airport outside a city in Davidson, Shelby, Hamilton, and Sullivan counties is not subject to taxation by the jurisdiction in which it is located (T.C.A. § 42-5-113).

### ***Civil Air Patrol***

Civil Air Patrol activities are in the public interest, and cities may appropriate funds for them (T.C.A. § 42-7-101).

### ***Audits***

Any city receiving state funds for its aviation program must allow the state Department of Transportation to audit municipal books to assure the money is being used properly. Refusal to permit such an audit or misuse of aviation program funds may result in withholding of state funds (T.C.A. § 42-2-222).

## Chapter Twenty-Five

# Education

The Tennessee Constitution, Article 1, Section 8, and Article 11, Sections 8 and 12, require the General Assembly to maintain and support a system of free public schools that provides equal educational opportunity for all children. (Also see *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139 (Tenn 1993); also 2002 WL 31247076 (October 8, 2002)). Each county is required, and some municipalities are permitted, to operate a school system (T.C.A. § 49-2-102, T.C.A. § 49-2-401).

### The Education and Improvement Act of 1991

The Education and Improvement Act of 1991 altered many aspects of school management, administration, and funding. The act authorizes establishing performance standards and incentive funding to reward schools that exceed the standards. The act establishes a method of measuring educational progress for teachers, schools, and districts and provides for school-based decisions. The act requires that by the year 2000, all school boards must be elected by district, and all school superintendents will be appointed by the school board. The act authorizes creating consolidation commissions to study school consolidations (T.C.A. §§ 49-1-101 *et seq.*).

### Municipal Operation

A number of municipalities operate school systems, under either their charters or general laws. In both cases, they are subject to considerable state regulation (T.C.A., Title 49, Chapters 1-6, 10). T.C.A. § 6-58-112(b) prohibits the establishment of new municipal school systems after May 19, 1998. Cities operating public schools under their charters and levying an additional elementary school tax for operating expenses (other than for grounds, buildings and equipment) are empowered to continue those operations under their charters, provided there is no transfer of children between city and county schools except by agreement between the respective boards of education (T.C.A. § 49-2-404).

Municipalities that have school systems may, by referendum, levy a municipal school tax above the county school tax. City schools also are entitled to their proportionate share of state funds and county school taxes on the basis of average daily attendance. (T.C.A. § 49-2-103, T.C.A. § 49-2-403).

### Contractual Operation of Municipal Schools

Municipalities are authorized to enter into two kinds of contracts for the operation of municipal schools

- A city school board and a county school board may enter into a contract for

the county superintendent of education to supervise the operation of city schools. Such a contract does not alter the distribution of county and state funds to city schools, but the city is authorized to devote its school funds to payment of the proportionate cost of the maintenance of such schools. The indebtedness of the city school system remains the obligation of the city (T.C.A. § 49-2-1001).

- The boards of education of two or more school systems are authorized to enter into a contract to establish, maintain and operate a public school or schools jointly. If the city does not have a school board, the city's governing body may enter into the contract (T.C.A. §§ 49-2-1101 *et seq.*).

## Consolidation of School Systems

There are five methods of consolidating city and county school operations in Tennessee (not counting the two contractual methods of operating municipal schools outlined above)

- City-county consolidation (T.C.A. §§ 7-1-101 *et seq.*, particularly T.C.A. § 7-1-108(18), and perhaps T.C.A. §§ 7-21-101 *et seq.*);
- Transfer by referendum of a city school system to the county (T.C.A. § 49-2-1002);
- Formation of a unification educational planning commission. This method involves an elaborate study of, and plans for, consolidation. The plan is subject to approval by the state Department of Education and the electorate in a referendum (T.C.A. § 49-2-1201);
- The municipal school system ceases operation, forcing the county to assume operation of the system (T.C.A. § 49-2-1002); and
- Multicounty consolidation, a method similar to T.C.A. § 49-2-1201 (T.C.A. § 49-2-1251).

## Distribution of Funds

Generally, a city school system is entitled to a *pro rata* share of funds from the issue of county school bonds (including capital outlay notes) financed by a countywide tax levy, based on average daily attendance in county and city schools. That is true whether the bonds are issued under T.C.A. §§ 49-3-1001 *et seq.* or T.C.A. §§ 9-21-101 *et seq.* Cities are authorized to waive their right to a share of such funds (T.C.A. § 49-3-1003, T.C.A. § 9-21-109). However, if the county school project is financed by the county through a loan from the Tennessee State School Bond Authority for “qualified zone academy projects” under T.C.A. §§ 49-3-1201 *et seq.*, the county is not required to share the proceeds of the loan with the city school system. A “qualified zone academy project” means “buildings, structures, improvements and equipment for schools of any local government” (T.C.A. § 49-3-1202(8) and T.C.A. § 49-3-1206(d)(2)).

T.C.A. § 12-10-115(c) requires counties receiving proceeds from a lease, loan

agreement, sales contract, or operating contract with a public building authority for school capital outlay purposes to share those proceeds with city school systems in the county just as capital outlay note proceeds are shared. Proceeds need not be shared by the county until they are received. The requirements of T.C.A. § 12-10-115(c) do not apply in Shelby County.

### Lottery Funds for Education Projects

T.C.A. §§ 49-4-901, *et seq.* creates a revolving loan fund to be used to finance K-12 educational facilities. One percent of lottery proceeds will be used as seed money that will allow the Local Development Authority to issue bonds for loans to local education agencies. Only local governments that are funding the local share of the Basic Education Program are eligible to participate in the loan program.

### Board Policies on the Internet

Local boards of education must make their operating policies available on the board's Web site if the board has one and if the policies are kept in electronic format (T.C.A. § 49-2-207).

### Sale of Surplus Property by Internet Auction

T.C.A. § 49-6-2006(c) and 2007(b) allow the sale of surplus school property by Internet auction.

### Educational Records as Evidence

The Educational Records as Evidence Act enacts specific procedures for school records custodians to use in responding to a subpoena *duces tecum* for records in cases in which the school is neither a party nor the place where the cause of action allegedly arose (T.C.A. §§ 49-50-1501 *et seq.*).

### Enforcement of Compulsory Attendance Laws

A local education agency may make an agreement with the appropriate law enforcement agency to assist in the enforcement of compulsory attendance laws after meeting the restrictions set out in T.C.A. § 49-6-3007(i).

### Pledge of Allegiance

T.C.A. § 49-6-101 requires the pledge of allegiance to be recited daily in each school classroom that has a flag. Local education agencies are encouraged to have a flag in every classroom. Students with religious or other objections are exempt from the



recitation requirement but must stand quietly while others recite the pledge.

## Miscellaneous Provisions

### ***Use of Facilities***

With the school board's permission, municipal school buildings and property may be used for public, community, or recreational purposes according to rules established by the board. No school official may be held liable for damages or injuries resulting from such use (T.C.A. § 49-2-405). Another statute authorizes the state Board of Education to encourage such use of school facilities (T.C.A. § 49-50-201).

### ***Educational Cooperation***

Local governmental units and boards of education may contract with each other to operate joint programs or build shared facilities. The program or facility may be administered by a separate legal entity, an administrator, or a joint board. Such agreements must be reviewed by the state attorney general and commissioner of Education (T.C.A. § 49-2-1301–1308).

T.C.A. § 49-6-4302 allows local educational agencies to act in partnership with local law enforcement agencies in hiring school resource officers under a state grant program, the Safe Neighborhoods Act of 1998 (T.C.A. § 38-8-115). Safe-school grants are available to each local education agency in the same percentage the local education agency's share of Better Education Program (BEP) funding bears to total BEP funding. Grants are subject to a 25 percent match and the filing of a proposed plan of spending.

### ***Day Care***

Boards of education may establish day-care centers in schools before and after the regular school day (T.C.A. § 49-2-203(b)(11)). T.C.A. §§ 71-3-501 *et seq.* contain extensive licensing and operational requirements for day-care centers that fall within that statute. A school system that operates day-care centers should consult that statute, the state Board of Education, and the state Department of Human Services, to determine whether its particular day-care program falls within the statute. T.C.A. § 49-2-203(b)(4)(B) authorizes municipal boards of education to lease unused portions of school buildings to private day-care centers under restrictions in that subsection.

### ***Difference in Dropout Rates***

Local school systems with more than 100 African-American students are urged to develop a plan to reduce the dropout gap if there is a five percent or more difference for three consecutive years between the systemwide dropout rate and the dropout rate for African-American students (T.C.A. § 49-1-216).

### ***Expulsion or Dismissal for Controlled Substance Possession or Violation***

A student who unlawfully possesses any prescription drugs, stimulant drugs, or other

controlled substances shall be expelled for at least one calendar year. The director or superintendent may modify this expulsion on a case-by-case basis (T.C.A. § 49-6-4018).

A teacher convicted of a drug offense must be immediately suspended and dismissed (T.C.A. § 49-5-511(c)(1)).

### ***Teachers' Religious Rights***

Subject to some limitations, teachers and other school employees may

- Read religious books during noninstructional time;
- Quietly say grace before a meal;
- Wear religious garb or jewelry that does not interfere with the educational environment; and
- Meet with other school employees before or after school or during lunch break for religious study.

The limitations are that

- Such activities do not interfere with other school employees;
- The religious exercises do not interfere with the educational process;
- Teachers and other school employees do not force others to participate; and
- The religious exercises do not infringe on the rights of others (T.C.A. § 49-6-8001–8006).

### ***Students' Religious Rights***

The Tennessee Students' Religious Liberty Act's purpose is to

- Clarify and set forth the religious liberty rights of students by statute;
- Aid students and parents in enforcing such rights;
- Create a "safe harbor" for public schools seeking to avoid litigation; and
- Allow free speech and religious liberty rights to the extent permissible under the Establishment Clause of the First Amendment to the U.S. Constitution (T.C.A. § 49-6-2901–2906).

Among the students' rights contained in the act are the right in a public school to

- Pray aloud or silently, alone or with other students to the same extent and under the same circumstances as a student is permitted to vocally or silently reflect, meditate, or speak on nonreligious matters alone or with other students in such public school;
- Express religious viewpoints to the same extent and under the same circumstances that a student is permitted to express viewpoints on nonreligious topics or subjects in school;
- Speak to and attempt to share religious viewpoints with other students in a public school to the same extent and under the same circumstances that a student is permitted to speak and to attempt to share nonreligious viewpoints with other students; and
- Be absent, in accordance with local education agency attendance policy, to

observe religious holidays and participate in other religious practices to the same extent and under the same circumstances that a student is permitted to be absent from school for nonreligious reasons.

These student rights are contingent upon the activity in question not

- Infringing upon the right of the school to maintain order and discipline;
- Disrupting the educational process;
- Undermining educational curriculum and assignments;
- Harassing or coercing other people to participate in the activity; or
- Otherwise infringing upon the rights of other persons.

### ***School Employees and Conflict of Interest***

There is no conflict of interest that would prevent a school employee's spouse or family members from submitting sealed bids to the school system if the employee has no discretion in the selection of bids (T.C.A. § 49-6-2003).

### ***Investigations of Applicants for Teaching Positions***

All applicants for teaching positions must agree to

- Release all investigative records regarding their criminal history to the board of education;
- Submit a fingerprint sample and submit to a criminal history check by the Tennessee Bureau of Investigation; and
- Pay any reasonable expenses connected to such investigations upon the first application (T.C.A. § 49-5-413).

### ***Disclosing Student Records***

The local education agency in which a transfer student seeks to enroll may require disclosure and copies of the student's records in accordance with the Family Education Rights and Privacy Act (12 U.S.C. §§ 1232g *et seq.*), including disciplinary records from educational agencies where the student was previously enrolled (T.C.A. § 49-6-3001).

### ***School Age Lowered***

An amendment to T.C.A. § 49-6-3001 lowers the age at which students may begin public school from six to five.

# County Functions Related to Cities

## Intergovernmental Agreements

There is broad authority in the statutes for cities and counties to jointly exercise powers and for contractual agreements between the two.

Any powers, privileges, or authority of a public agency in Tennessee may be exercised and enjoyed jointly with any other public agency of Tennessee, of any other state, or of the United States, providing (in the case of cities and counties) that this authority “shall apply only to such powers, privileges, or authority vested in their governing bodies” (T.C.A. § 12-9-104).

Agencies of political subdivisions that have governing boards separate from the governing body (such as municipal utility boards) may enter into interlocal agreements for joint or cooperative action with other similar agencies and other public agencies. Governing bodies of political subdivisions must approve agreements made by their agencies before they take effect (T.C.A. § 12-9-104(a)).

Governing bodies may likewise enter into contracts “with any one or more public agencies to perform any governmental service, activity, or undertaking that each public agency entering into the contract is authorized by law to perform” (T.C.A. § 12-9-108).

## Urban-Type Public Facilities

Counties are authorized to construct and operate “urban-type public facilities.” This term means

*...sanitary and storm sewer lines and facilities, plants for the collection, treatment, and disposal of sewage and waste matter, facilities and plants for the incineration or other disposal of garbage, trash, ashes, and other waste matter, and/or water supply and distribution lines, facilities, and plants, chemical pipelines and docks, and in counties having a population according to the 1960 federal census or any subsequent federal census of not less than 11,900 nor more than 11,925 [Wayne], of not less than 17,300 nor more than 17,500 [Hardin], and of not less than 600,000 [Shelby], fire protection” (T.C.A. § 5-16-101).*

Counties may operate these facilities directly through a county department, or they may create a board of public utilities (T.C.A. § 5-16-102–103). Cooperative undertakings with other governmental units, including “municipalities, towns, utility districts, and improvement districts within the county” are specifically authorized when “mutually advantageous” (T.C.A. § 5-16-107).

All project plans must be submitted to a regional planning commission or, in the absence of such a commission, the planning commission of the largest city in the county. If neither exists, plans must be submitted to the State Planning Commission. The planning commission receives the plans “for study and a written report” within 90 days or an extended period fixed by the county governing body (T.C.A. § 5-16-112).

Following the planning commission review, if a facility is to be located within five miles of any part of a city’s boundary, a resolution petitioning the city to provide the facility, together with a full report of the county’s plans (engineering and financial feasibility reports, etc.), must be presented to the city. The county may proceed if the city fails “to take appropriate action to provide a specified public facility or facilities in a specified area or areas” within 90 days (T.C.A. § 5-16-111).

Provision is made for transferring to a city rights, duties, property, assets, or liabilities in conjunction with such facilities in the event of annexation, including arbitration for disagreements. The statutory language is the same as that in T.C.A. § 6-51-111 (T.C.A. § 5-16-110). (See Chapter 16, “Utilities.”)

## Fire Protection

The governing body of any county (except a county under metropolitan government) is empowered to create a “countywide fire department” to be headed by a county fire chief appointed by and serving at the pleasure of such body. Fire tax districts may be established by the governing body and an annual fire tax levied in each district to pay its proportionate share of the department’s yearly expenses. In this case, city residents may not be taxed unless they receive fire protection services from the countywide department. Alternatively, the county governing body may allocate other revenue from the general fund to provide fire protection to unincorporated areas of the county.

In addition to such direct fire protection services, a county using this statute may

- Contract with cities to provide services outside corporate limits;
- Contract to provide services to cities;
- Provide emergency ambulance, first aid, and rescue services;
- Adopt fire prevention regulations having the force of law;
- Give aid anywhere in the county at fires, floods, or other disasters;
- Assist local and volunteer fire departments, including with financial aid;
- Provide training and maintenance to any fire department; and
- Set up a communications system for all fire and emergency units in the county (T.C.A. §§ 5-17-101 *et seq.*).

Provision is made for transferring to a city rights, duties, property, assets, or liabilities in conjunction with such facilities in the event of annexation, including arbitration for disagreements (T.C.A. § 5-17-102(18)).

Further authority for a county to contract with a city to purchase fire protection service is found in T.C.A. § 6-54-601.

## Refuse Collection and Disposal

Counties are authorized to provide refuse collection and/or disposal on a countywide basis. A county agency may be given this function, or contracts for the service may be made with “any municipality, any utility or other service district, any private organization, or any combination of such entities.” Joint action with other counties and municipalities also is authorized.

As with fire protection, districts must be established where refuse collection and disposal service are to be provided. The full costs must be paid from a tax levy within the district and/or charges levied on service recipients. A countywide property tax levy may be used “only if all persons in the county are to be equally served.” This is specifically prohibited if any city or special district within the county provides collection and disposal services to its residents (T.C.A. § 5-19-101–116).

Under the 1991 Solid Waste Management Act, counties are required to provide residents a collection system that consists, at a minimum, of convenience centers with certified operators and attendants (T.C.A. § 68-211-851). (For further information on the Solid Waste Management Act, see Chapter 14, “Environmental Quality.”)

## Building Codes

Any county may adopt by reference the “rules and regulations that have been prepared by technical trade associations or model code organizations regulating building construction, plumbing and gas installation, any portion of such rules, or any amendments of such rules” after complying with certain procedural requirements. Such codes are applicable only in a county’s unincorporated areas and in cities “which do not elect, now or hereafter, to adopt their own codes regulating the same subject areas” (T.C.A. §§ 5-20-101 *et seq.*).

## Zoning

After a county’s regional planning commission has submitted a zoning plan, including the text of a zoning ordinance and zoning maps, the county may exercise zoning powers outside municipalities.

The county legislative body also is required to set up a county board of zoning appeals with three or five members to hear appeals and to “make special exceptions to the terms of the zoning regulations in harmony with their general purpose and intent.” The position of county building commissioner, with power to issue or withhold building permits, may be established by a county legislative body to enforce its zoning

regulations (T.C.A. § 13-7-101– 115).

## Chapter Twenty-Seven

# Tort Liability

### Tennessee Governmental Tort Liability Act

In 1973, the Tennessee General Assembly enacted a comprehensive Tennessee Governmental Tort Liability Act (T.C.A. §§ 29-20-101 *et seq.*). The act became effective January 1, 1974, and was made applicable only to claims or actions arising after that date. It applies to any political subdivision of the state, including any municipality or any instrumentality of government created by a municipality.

#### **Definitions**

1. “Employee” is “an official, officer, employee or servant, or any member of any board, agency or commission (whether compensated or not) or any officer, employee or servant thereof ...”; and “regular members of voluntary and auxiliary firefighting, police, or emergency assistance programs” (T.C.A. § 29-20-102).
2. “Government employee” is
  - (1) “A regular member of a voluntary or auxiliary firefighting, police, or emergency assistance organization of a governmental entity ...;”
  - (2) “Persons who are employed in part-time, seasonal, or probationary positions ... if they receive the same benefits or are subject to the same job protection system and rules as other persons employed by that government in comparable part-time, seasonal, or probationary positions ...;”
  - (3) People upon whom has been conferred the status of employee under the Interlocal Cooperation Act (T.C.A. § Title 12, Chapter 9) or as otherwise “duly authorized by law” (T.C.A. § 29-20-107).
3. “Governmental entity” means any political subdivision of Tennessee, including, but not limited to, any municipality, metropolitan government, county, utility district, or school district duly created and existing pursuant to the state’s constitution and laws; in Shelby County a nonprofit public benefit corporation operating a hospital whose board is appointed by a governmental entity; or any instrumentality of government created by any one or more of the named local governmental entities or by an act of the General Assembly (T.C.A. § 29-20-102).
4. “Injury” means death, injury to a person, damage to or loss of property, or any other injury to a person or estate that would be actionable if inflicted by a private person or his or her agent (T.C.A. § 29-20-102).

Expressly not an employee under the Tennessee Governmental Tort Liability Act is “any person who is not an elected or appointed official or a member of a board, agency or commission ... unless the court specifically finds that all of the following elements exist:

- “The governmental entity itself selected and engaged the person in question to perform services;”
- The governmental entity is liable for, and the person receives from the entity’s payroll department, all his or her compensation;



- The person receives the same benefits, including retirement and insurance program eligibility, from the governmental entity;
- The person acts under the control and direction of the governmental entity as to both results and means and details by which the result is accomplished; and
- The person is entitled to the same job protection and grievance rules that apply to other employees.

***Determination of Liability***

The statute provides that governmental entities are not liable for their torts except as provided in the statute. The act states, “Except as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary. ... When immunity is removed by this chapter, any claim for damages must be brought in strict compliance with the terms of this chapter” (T.C.A. § 29-20-201).

***Waiver of Immunity***

A governmental entity may waive its immunity from suit only by express provisions or endorsement of a policy or contract of insurance authorized by this law to cover its liabilities. The law also provides that any contract of insurance to cover liabilities under federal law shall not be construed or deemed to be a waiver of such immunity (T.C.A. § 29-20-404).

***Situations Where Immunity is Removed***

Governmental entities are not immune from suit for injuries resulting from an employee’s negligent operation of a motor vehicle or other equipment while in the scope of his or her employment. However, this provision does not repeal T.C.A. § 55-8-101, T.C.A. § 55-8-108, or T.C.A. § 55-8-132, which relate to operating authorized emergency vehicles. The immunities provided by these sections are expressly continued (T.C.A. § 29-20-202).

Governmental entities are not immune from suit for any injury caused by a defective, unsafe, or dangerous condition of any street, alley, sidewalk, or highway owned and controlled by the governmental entity, including any traffic-control devices. This provision does not apply unless constructive and/or actual notice to the governmental entity of the condition is alleged and proved (T.C.A. § 29-20-203).

Governmental entities are not immune from suit for any injury caused by the dangerous or defective condition of any public building, structure, dam, reservoir, or other public improvement owned and controlled by the governmental entity. Immunity is not removed for latent defective conditions, nor shall this section apply unless constructive and/or actual notice to the governmental entity of the condition is alleged and proved

(T.C.A. § 29-20-204).

Governmental entities may be sued for injury proximately caused by a negligent act or omission of an employee within the scope of his or her employment, unless the injury arises or results from

- Riots, unlawful assemblies, public demonstrations, mob violence, or civil disturbances;
- Assessing, levying, or collecting taxes;
- Exercising or performing or failing to exercise or perform a discretionary function, whether or not the discretion is abused;
- False imprisonment pursuant to a *mittimus* from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interfering with contract rights, inflicting mental anguish, or invading right of privacy or civil rights;
- Issuing, denying, suspending, or revoking or failing or refusing to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;
- Failing to make an inspection or making an inadequate or negligent inspection of any property;
- Instituting or prosecuting any judicial or administrative proceeding, even if malicious or without probable cause;
- Misrepresentation by an employee, whether or not such is negligent or intentional; or
- Y2K-related computer failures occurring before January 1, 2005 (T.C.A. § 29-20-205).

The nine exceptions listed above are categories in which governmental entities may not be sued for the negligent acts of their employees. Except for these listed categories, governmental entities are liable for any injury proximately caused by a negligent act or omission of any employee within the scope of his or her employment.

T.C.A. § 29-20-201 grants immunity from suit to all members of boards, commissions, agencies, authorities, or other governing bodies of governmental entities arising from their affairs except for willful, wanton, or grossly negligent acts.

### ***Procedures Under the Act***

The remainder of the act provides the procedures for making claims against governmental entities and for determining liability, limitations on liability, and the means of satisfying claims or judgments. An important provision relates to employee liability.

A governmental entity or employee is given 60 days to answer or otherwise respond to a claim, action, or suit. If the claim is denied, the claimant may institute an action in the circuit court. This action must commence within 12 months after the cause of action arises. A significant provision gives circuit courts exclusive original jurisdiction over any action brought under the act (except in Shelby County where General Sessions Court

has concurrent jurisdiction up to jurisdictional limits), and the action is heard and decided without jury intervention, unless a nongovernmental defendant also is sued. In these cases, any party may request a jury.

Suits filed under the act must be brought in the county where the governmental entity is located. A governmental entity operating in more than one county shall be deemed to be located in the county where its principal office is located.

An officer or body appointed by the governing body of any governmental entity may, subject to such regulations and procedures as may be prescribed by the governing body, compromise and settle any action for damages or relief sought under the act. If no such appointment has been made, the chief administrative officer of the governmental entity shall be deemed to have been appointed and to have such power.

Before holding a governmental entity liable for damages, the court must first determine that

- The employee act(s) was (were) negligent and the proximate cause of the plaintiff's injury;
- The employee(s) acted within the scope of his (their) employment; and
- None of the exceptions is applicable (T.C.A. § 29-20-301–313).

Several sections of the act deal with paying claims or judgments against governmental entities. Any claims approved for payment by a governmental entity or any final judgment obtained against a governmental entity shall be paid from funds appropriated or reserved for that purpose. At the governmental entity's discretion, claims may be paid in not more than 10 equal, annual installments commencing the next fiscal year or in such other manner agreed upon by the claimant and governmental entity. Installment payments shall bear interest at six percent per annum on the unpaid balance. If the judgment is less than \$5,000, a lump sum payment must be made (T.C.A. § 29-20-312).

### ***Protection for Employees***

No claim may be brought or judgment entered against an employee for damages for which the governmental entity is liable under the act, except in alleged medical malpractice cases. No claim for medical malpractice may be brought or judgment entered against a health care practitioner for damages unless the amount sought or judgment entered exceeds either the minimum limits set in the act or the insurance coverage actually carried by the governmental entity, whichever is greater, and the governmental entity also is made a party defendant.

No claim may be brought or judgment entered against an employee for injury proximately caused by an act or omission of the employee within the scope of his or her employment for which the governmental entity is immune in amounts exceeding those established for governmental entities (see "Governmental Liability Caps") unless the act or omission was willful, malicious, criminal, for personal financial gain, or medical malpractice committed by a health care practitioner and the claim is brought against the

health care practitioner. Only doctors and nurses are considered health care practitioners under the act (T.C.A. § 29-20-310 (b) and (c)).

Local governmental entities may insure any or all employees against all or any part of their liability for injury or damage resulting from a negligent act or omission, or they may indemnify their employees for claims for which the governmental entity is immune upon such terms and conditions as the local government may deem appropriate. Cities also may insure or indemnify volunteers working under the direction of an employee from claims for which the governmental entity is immune. The indemnification amount may not exceed the liability limits established for governmental entities, except for claims for which there is no liability cap (see “Governmental Liability Caps”) (T.C.A. § 29-20-310, T.C.A. § 29-20-406).

**Governmental Liability Caps**

The act caps at specified dollar amounts the liability exposure of local governments for tort claims. Every policy or insurance contract purchased by a governmental entity must provide these minimum coverage amounts. The caps (or minimum coverage amounts) in the chart below apply in each accident.

Governmental vehicles may be considered uninsured motor vehicles. However, the applicable limits of liability for cities for claims arising out of the operation of a government vehicle are equal only to the limits of T.C.A. § 29-20-311 (T.C.A. § 56-7-1201(d), T.C.A. § 56-7-1202(c)).

The law is comprehensive, but it does not affect certain statutes. Any action in eminent domain initiated by a landowner (inverse condemnation) under T.C.A. § 29-16-123 and T.C.A. § 29-16-124 is explicitly exempted from the caps (T.C.A. § 29-20-105). Similarly, the caps do not apply to any action brought by an employee under Tennessee’s workers’ compensation laws (T.C.A. § 29-20-106).

<b>Date Cause of Action Arose</b>	<b>Liability Cap for Death or Injury to One Person</b>	<b>Liability Cap for Death or Injury to All Persons</b>	<b>Liability Cap for Property Damage</b>
On or after July 1, 1987, but before July 1, 2002	\$130,000	\$350,000	\$50,000 ( <i>applies to causes of action arising on or after July 1, 1992</i> )
On or after July 1, 2002, but before July 1, 2007	\$250,000	\$600,000	\$85,000
On or after July 1, 2007	\$300,000	\$700,000	\$100,000

**Joint Reserve Funds Allowed: TML Risk Management Pool**

The Tennessee Municipal League (TML) has established a liability insurance pool to serve member cities with low-cost, reliable liability coverage. Detailed information about

the pool is available from TML.

Any governmental entity is entitled to create and maintain a reserve or special fund or, with one or more other local governmental entities, contribute to a joint reserve or special fund to pay claims against the cooperating governmental entities pursuant to the act, or to purchase liability insurance to protect the cooperating governmental entities from any or all risks created by the act (T.C.A. § 29-20-401).

### ***Recreation Liability***

See the liability section in Chapter 20, "Parks and Recreation."

### ***Community Service: Criminal and Juvenile Offenders***

A municipality, its officers, and its employees will not be liable to the offender, his or her family, or other persons for acts of a state criminal law offender or a municipal ordinance offender performing public service work if the municipality exercised due care in supervising the offender (T.C.A. § 41-3-107).

If a municipality or other organization exercised due care in supervising a juvenile performing community service work, immunity is granted to such entities for

- Any injuries sustained by the juvenile;
- Injuries to others caused by the juvenile;
- Any act of the juvenile; and
- Liability for the juvenile or his or her family for death or injuries caused by the juvenile (T.C.A. § 37-1-131(a)(7)).

Inmates housed in county and municipal workhouses may volunteer to work for the municipality or other governmental entity (T.C.A. § 41-3-106(b)(2)).

### ***Drug Task Force Members***

A limited number of drug task force members are volunteer employees of the state for tort liability purposes (T.C.A. § 8-42-101(a)(3)). T.C.A. § 8-7-110 affirms the rights, powers, duties and immunities of these task force officers throughout the judicial district.

### ***Annual Reports on Tort Liability Activities Required***

Municipalities, counties, utility districts with more than 5,000 customers, human resource agencies, public building authorities, development districts, public hospitals, and nonprofit volunteer fire departments that receive funds appropriated by a county or municipal legislative body, human resource agency, public building authority, or development district must file an annual report of their tort liability activities for the previous fiscal year with, and on a form prescribed by, the state treasurer. The report is due March 30, 2001, and on March 30 each year thereafter for three years.

### ***Emergency Communications District Boards***

Emergency communications district boards organized under T.C.A. § 7-86-105 are

expressly declared immune from any claim, complaint or suit that relates to or arises from any conduct of the affairs of the board, except in cases of gross negligence of the board or its members. However, that immunity does not extend to any employee of the district (T.C.A. § 29-20-108).

***Mutual Aid***

T.C.A. § 29-20-207 allows any party benefitting from a response under a written mutual aid, automatic response, operational agreement, or other intergovernmental agreement to pay the judgment against the provider up to the tort liability limits unless otherwise provided in the agreement.

## Chapter Twenty-Eight

# Miscellaneous

### Abandoned Property

The Uniform Disposition of Unclaimed Property Act of 1978 governs the disposition of unclaimed or abandoned personal property, defined as property in a political subdivision's possession that is unclaimed for one year. The act does not apply to real property and is most commonly used to reclaim utility deposits. The state treasurer is responsible for administering the act. Any holder of abandoned property worth \$50 or more is required to keep a record of the owner's name and last known address for 10 years and to attempt to notify the apparent owner if there is an accurate address (T.C.A. §§ 66-29-101 *et seq.*). Cities may request that property in the treasurer's hands that remains unclaimed be returned to the city under procedures outlined in T.C.A. § 66-29-121(c). T.C.A. § 66-29-129(b) sets a civil penalty equal to 10 percent of the value of the property each year it is not delivered to the treasurer. The penalty cannot exceed 25 percent of the value of the property or \$50,000, whichever is less. These penalties do not apply to inadvertent omissions of property having a value of less than 10 percent of total reportable property.

### Balloon Releases

Cities are specifically included in an act that prohibits releasing more than 25 nonbiodegradable, helium-filled balloons. Several counties are exempted from this act by population (T.C.A. § 68-101-108).

### Cemeteries

Cities may act as trustees for cemeteries or burial places inside the city boundaries or within five miles of the city boundaries when so appointed by any person or court of competent jurisdiction (T.C.A. § 46-3-101). A city may bring or join a suit to terminate the use of land as a cemetery and to have the remains of deceased persons removed and buried elsewhere. Authority for taking such action, however, extends only to land within one mile of the city limits and not beyond a county's boundaries or within another municipality (T.C.A. § 46-4-103). With approval by a resolution of the governing body, a cemetery company may purchase up to 200 acres of land within a city for perpetual use (T.C.A. § 46-2-101).

### Care of Children

Municipalities "are authorized and empowered to establish, erect, operate, and maintain homes for the care and treatment of dependent and neglected, unruly, and delinquent children, and to purchase services from any agency, public or private, which is authorized by law to receive or provide care and/or services for children" (T.C.A. § 37-2-

204).

### City Recorder or Clerk Certification

With the exception of certain classes of clerks and recorders (lawyers, certified public accountants, city managers and administrators with a master of arts degree in public administration, and persons who have served as both a city recorder and city judge for at least 25 years), cities with populations of 1,500 or more that employ a municipal clerk or recorder are required to have one person meeting the certification qualifications established by the secretary of state. Certification requires at least 100 hours of education courses. Credit hours are given to those with associate's or bachelor's degrees. Also, certification from the International Institute of Municipal Clerks satisfies the requirement (T.C.A. § 6-54-120). Municipal clerks or recorders hired after July 1, 1994, are allowed four years to meet the certification qualifications. After attaining certification, a clerk or recorder must attend a minimum of 18 hours of continuing education courses every three years to remain certified.

### Conflicts of Interest

Municipal officers and employees are permitted to have an "indirect interest" in contracts with their municipality if the officers or employees publicly acknowledge their interest. An indirect interest is any interest that is not "direct," except it includes a direct interest if the officer is the only supplier of goods or services in a municipality. A "direct interest" is any contract with the official himself or with any business of which the official is the sole proprietor, a partner, or owner of the largest number of outstanding shares held by any individual or corporation. Except as noted, direct interests are absolutely prohibited (T.C.A. § 6-2-402, T.C.A. § 6-20-205, T.C.A. § 6-54-107–108, T.C.A. § 12-4-101–102).

An elected official or a member-elect of a governing body may not knowingly receive a fee, commission, or any other form of compensation, except for that paid by the municipality or a county or the state, to advise or assist in influencing municipal legislative or administrative action. A violation of this prohibition is a Class C felony if it constitutes bribery and a Class A misdemeanor otherwise. An official who is convicted of either will be barred from ever holding office in Tennessee (T.C.A. § 2-10-124).

### Gardening

Cities may participate in community gardening programs administered by the Department of Agriculture through county extension agents. The city's primary role is to provide suitable vacant land (T.C.A. §§ 43-24-101 *et seq.*).

### Housing



Extensive and detailed laws relating to housing authorities, urban renewal, etc., are codified in T.C.A. § Title 13, Chapters 20–23. These laws are not summarized in this publication.

The Tennessee Housing Development Agency (THDA) was created in 1973 and empowered to issue bonds and otherwise raise capital for housing projects (T.C.A. §§ 13-23-101 *et seq.*). The state realty transfer tax and mortgage tax were increased in 1988 for THDA grants to cities and other eligible political subdivisions to construct and rehabilitate housing for low- and moderate-income families.

### ***Grants for Residential Property in Older Neighborhoods***

A municipality may by a resolution passed by a two-thirds vote of its governing body establish a grant program for improvements to residential property constructed 50 or more years before April 22, 2004 (T.C.A. §§ 13-5-101 *et seq.*).

### **Libraries**

Cities and counties have general authority to maintain public library systems and levy taxes for them. Joint action by cities and counties also is authorized. If a tax levy is countywide, it must be shared on a population basis with any city library system supported by city taxes (T.C.A. §§ 10-3-101 *et seq.*). A city may participate in and make appropriations to a regional library system (T.C.A. § 10-5-101–107). The state Library and Archives Management Board may enter into a contract for state/local matching funds to finance local library positions subject to approval by the local legislative body that appropriates library funds (T.C.A. § 10-1-104).

### **Solemnization of Marriages by Mayors**

Mayors may perform marriage ceremonies in all Tennessee counties and retain any related gratuities (T.C.A. § 36-3-301).

### **Medical Assistance**

Political subdivisions may appropriate funds directly to the Department of Health to provide medical services to recipients of public assistance or supplemental security income or to needy persons in similar circumstances (T.C.A. § 71-5-131).

### **National Defense**

Municipalities may appropriate funds and lease, lend, sell, or donate real or personal property to the state and federal governments “for purposes of local, state, and national defense and for the use of the National Guard” (T.C.A. § 58-1-510).

## Port Authorities

A municipality or any two or more municipalities acting jointly may establish a port authority (T.C.A. §§ 7-87-101 *et seq.*).

## Public Defender

A city may be reimbursed for expenses incurred by a municipal public defender's office up to the amount the state would have spent to provide legal counsel to the indigents involved. This amount is determined by the executive secretary to the Supreme Court (T.C.A. § 40-14-209).

## Relocation Assistance

When a city construction project is undertaken with federal or state financial assistance and it requires residents to be moved from their homes or businesses to be moved from their locations, the city must follow the procedural and payment rules of the Uniform Relocation Assistance Act (T.C.A. §§ 13-11-101 *et seq.*).

## Safety Councils

Cities may make appropriations to safety councils approved by the Tennessee Safety Council (T.C.A. § 7-51-501).

## Unemployment Grants

The Local Economic Adjustment Act of 1975 broadly delegates power to cities, counties, and development districts to accept grants and loans from the federal and state governments and to act jointly in "activities designed to alleviate or moderate existing or potential conditions of severe economic adjustment resulting from termination or closure of major industries or firms, unemployment caused therefrom, and other hardships ... and other conditions ..." (T.C.A. § 9-14-101–108).

## Watershed Development Authority

Contributions from general funds may be made to a watershed development authority if all or a portion of it is located in the county in which the city is located, but no special tax may be levied (T.C.A. § 6-56-108).



**MTAS**  
**Municipal Technical  
Advisory Service**

*In cooperation with the  
Tennessee Municipal League*

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